



# TOWN OF CARRBORO

## PLANNING BOARD

301 West Main Street, Carrboro, North Carolina 27510

7:30 P.M.

TOWN HALL BOARD ROOM

### A G E N D A

THURSDAY, OCTOBER 20, 2022

Item	Topic/Action	Person/Agency	Time (Approx)
I.	WELCOME & INTRODUCTIONS	Chair	7:30
II.	APPROVAL OF MINUTES		
	October 6, 2022 Meeting Minutes	Chair/Planning Board	7:35
III.	OTHER MATTERS		
	A. National Community Planning Month	Chair/Planning Board/Staff	7:40
	B. Revised draft LUO Text Amendment Relating to Criminal Penalties	Staff/Chair/Planning Board	9:10
IV.	ADJOURNMENT	Chair	9:30

**PUBLIC COMMENT AT PLANNING BOARD MEETINGS**

If members of the public wish to address the Planning Board on matters on the agenda, a time will be provided during the meeting. Speakers may address the Board only after being recognized by the Chair and only from the podium, subject to a three-

***TOWN HALL IS ACCESSIBLE FOR PERSONS WITH DISABILITIES.***

***FOR MORE INFORMATION, CONTACT STAFF AT 919-918-7325.***



4

## TOWN OF CARRBORO

### PLANNING BOARD MEETING

301 West Main Street, Carrboro, North Carolina 27510

#### OCTOBER 6, 2022 – REMOTE MEETING

MEMBERS	GUEST	STAFF
Braxton Foushee, Chair	Nicholas Stover	Tina Moon
Catherine Fray		Marsha Pate
Elmira Mangum		
Susan Poulton		
Bruce Sinclair		
David Clinton		
Rachel Gaylord-Miles		

Absent/Excused: Khadijah Amina, Rasam Tooloee

#### I. WELCOME INTRODUCTIONS

Foushee opened the meeting at 7:30 PM and asked Planning Board members to introduce themselves to Mr. Stover, a candidate for one of the vacant seats on the Planning Board. Members welcomed Mr. Stover who has applied to Planning Board and the Environmental Advisory Board. No adjustments were made to the agenda.

#### II. APPROVAL OF MINUTES

Poulton made a motion to approve the June 16, 2022, minutes; Mangum seconded the motion.

##### VOTE:

AYES: (6) Foushee, Fray, Gaylord-Miles, Mangum, Poulton, Sinclair

NOES: (0)

ABSTENTIONS: (0)

ABSENT/EXCUSED: (2) Tooloee, Amina

The June 16, 2022, Planning Board minutes were approved.

#### III. OTHER MATTERS

##### A. Draft LUO Text Amendment Relating to Criminal Penalties

Moon made the staff presentation. The Town Attorney prepared a draft ordinance to bring the Land Use Ordinance into conformance with S. L. 2021-138 (SB 300), the Criminal Justice Reform Act, adopted as part of 2021 legislative session. Part XIII, Decriminalization of Certain Ordinances, specifies that local governments must amend local ordinances to specifically identify violations that may be enforced with criminal penalties.

The draft ordinance, if adopted, would amend Article VII, Enforcement and Review, Section 15-114, Penalties and Remedies for Violation, by replacing the existing subsections 15-114(a) and 15-114(b).

Planning Board members reviewed the draft ordinance with particular attention to the descriptive subdivisions 15-114(b)-1 through 3, which appeared to be removed as part of the amendment. After

1 discussion, the motion was made by Fray and seconded by Clinton that the Planning Board of the  
2 Town of Carrboro recommends that the Town Council reject the draft ordinance, for the following  
3 reason:  
4

5 Losing the subdivisions under subsection (b) removes the existing guidance on determining the  
6 amount of the penalty and the requirements of notification and the appeals process for the penalty.  
7 As a result, the meaning of the ordinance is changed more than is intended by the state statute.  
8

9 **VOTE:**

10 AYES: (6) Foushee, Fray, Gaylord-Miles, Mangum, Poulton, Sinclair

11 NOES: (0)

12 ABSTENTIONS: (0)

13 ABSENT/EXCUSED: (2) Tooloee, Amina  
14

15 **B. Update on Meeting Format/Schedules**

16 Staff provided an update on the Town Council’s discussion of the meeting policy about in-  
17 person/remoting meetings. Acknowledging the benefits/challenges associated with each meeting  
18 format, the consensus of the planning board was to return to meeting in person, in the Board Room in  
19 Town Hall. Members were encouraged to wear masks.  
20

21 **C. National Community Planning Month**

22 Staff noted that October is National Community Planning Month and asked if there was interest in  
23 putting together an event to celebrate. Members discussed a couple of different program ideas:

- 24 • Comparing Carrboro in the 1960s-70s or 1980-1990s with Carrboro today
- 25 • Explaining the role of the Planning Board in reviewing development applications by comparing  
26 an image of property pre-development with the development plans, and what was constructed.
- 27 • Consider making a video that could be housed on the Town website.  
28

29 Members were asked to think about projects that they would like to consider for the program/video for  
30 the upcoming mid-month meeting. Staff to reach out to the Communications and Engagement Director  
31 to see if the department could provide assistance.  
32

33 **D. Update on Upcoming Events**

34 Staff provided a brief “tour” of the updated Town of Carrboro website with information relating to  
35 upcoming events of possible interest, and the location of the story map with updates on Town projects.  
36 A reminder that the Town will again host early voting in the Civic Club building on Bim Street was  
37 shared.  
38

39 **IV. ADJOURNMENT**

40 Having completed all the items on the agenda, Sinclair made a motion to adjourn the meeting; Fray  
41 seconded the motion. The meeting ended with a unanimous vote at 8:55 PM.

# PLANNING BOARD

ITEM NO. \_\_\_\_\_

## AGENDA ITEM ABSTRACT

MEETING DATE: October 20, 2022

**TITLE: Land Use Ordinance Amendments Relating to Limitations on the Use of Criminal Penalties**

<b>DEPARTMENT: Planning</b>	<b>PUBLIC HEARING: YES ___ NO_X_</b>
<b>ATTACHMENTS:</b> A. Recommendation Template B. Draft LUO Ordinance C. LUO Article VII	<b>FOR INFORMATION CONTACT:</b> Christina Moon – 918-7325 Patricia McGuire -- 918-7327

### PURPOSE

The purpose of this item is to consider a revised text amendment to the Land Use Ordinance (LUO) to conform to state legislation relating to the use of criminal penalties for violations to development regulations. The Town Council has set a public hearing date for November 1, 2022, and has requested Planning Board review prior to the public hearing.

### INFORMATION

At the October 6, 2022, Planning Board meeting, the board reviewed a draft amendment prepared by the Town Attorney to bring the Land Use Ordinance into conformance with S. L. 2021-138 (SB 300), the Criminal Justice Reform Act ([10062022-4149 \(townofcarrboro.org\)](http://10062022-4149.townofcarrboro.org)). The draft ordinance was intended to replace the existing language in subsections 15-114(a) and 15-114(b) and, as written, appeared to delete the descriptive subdivisions under 15-114(b). Staff has reached out to the Town Attorney for clarification. The descriptive language was not intended to be removed as part of the amendment. The draft ordinance as been modified with additional language to make this clearer (*Attachment B*).

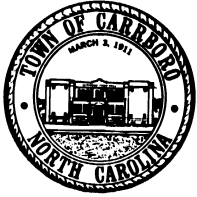
Based on the discussion at the October 6<sup>th</sup> meeting, the Planning Board's recommendation for the Council to reject the draft ordinance was in large part related to the removal of the descriptive language under 15-114(b). The public hearing date of November 1<sup>st</sup> provides sufficient time for the Public Board to amend its recommendation based on the revised ordinance, if desired.

The Town Council must receive public comment before adopting amendments to the Land Use Ordinance. Planning Board and Orange County review is also needed. A copy of Article VII of the LUO is provided for information (*Attachment C*). As drafted, only the language in subsections 15-114(a) and 15-114(b) would be affected by the change.

A public hearing has been set for November 1, 2022. The Town Council must receive public comment before adopting amendments to the LUO. Orange County and Planning Board review are also needed.

### **RECOMMENDATION**

Staff recommends that Planning Board members review the revised draft LUO ordinance and consider adopting a recommendation for inclusion in public hearing materials for November 1<sup>st</sup>. A recommendation template has been provided for the board to use (*Attachment A*).



# TOWN OF CARRBORO

## Planning Board

***301 West Main Street, Carrboro, North Carolina 27510***

# R E C O M M E N D A T I O N

**THURSDAY, OCTOBER 20, 2022**

### **Land Use Ordinance Text Amendment to Comply with SB 300, SL2021-138 Relating to Certain Limitations on the Use of Criminal Penalties**

Motion was made by \_\_\_\_\_ and seconded by \_\_\_\_\_ that the \_\_\_\_\_ of the Town of Carrboro recommends that the Town Council \_\_\_\_\_ the draft ordinance.

**VOTE:**

AYES: ( )

NOES: ( )

ABSTENTIONS: ( )

ABSENT/EXCUSED: ( )

**Associated Findings**

By a unanimous show of hands, the \_\_\_\_\_ membership indicated that no members have any financial interests that would pose a conflict of interest to the adoption of this amendment.

Motion was made by \_\_\_\_\_ and seconded by \_\_\_\_\_ that the \_\_\_\_\_ of the Town of Carrboro finds the proposed text amendment, which will update the Land Use Ordinance to comply with recent changes to state legislation relating to the use of criminal penalties for development violations \_\_\_\_\_ consistent with the provisions in section 15-2 which specify the authority granted to the Town through state enabling legislation.

Furthermore, the \_\_\_\_\_ of the Town of Carrboro finds the proposed text amendment is reasonable and in the public interest because the Town seeks to remain consistent with its adopted plans or policies.

**VOTE:**

AYES: ( )

NOES: ( )

ABSTENTIONS: ( )

ABSENT/EXCUSED: ( )

\_\_\_\_\_  
(Chair)

\_\_\_\_\_  
(Date)

AN ORDINANCE AMENDING THE CARRBORO LAND USE ORDINANCE TO COMPLY  
WITH SB 300, SL 2021-138 RELATING TO CERTAIN LIMITATIONS  
ON THE USE OF CRIMINAL PENALTIES

**\*DRAFT 10/10/2022\***

THE TOWN COUNCIL OF THE TOWN OF CARRBORO ORDAINS:

Section 1. In Section 15-114 Penalties and Remedies for Violations, in Article VII of the Land Use Ordinance, existing subsections (a) and (b) are replaced with the following [(b)(1) through (3) retained]:

(a) Violations of Article IV Sec. 15-77, No Subdivision Without Plat Approval, shall constitute a misdemeanor punishable as provided in G.S. 160D-807 (a), Penalties for transferring lots in unapproved subdivisions.

(b) Any act constituting a violation of the provisions of this chapter or a failure to comply with any of its requirements, including violations of any conditions and safeguards established in connection with the issuance of variances or special use or conditional use permits, shall subject the offender to a civil penalty of up to five thousand dollars (\$5,000.00).

Section 2. All provisions of any town ordinance in conflict with this ordinance are repealed.

Section 3. This ordinance shall become effective upon adoption.

## ARTICLE VII

### ENFORCEMENT AND REVIEW

#### **Section 15-111 Complaints Regarding Violations.**

Whenever the administrator receives a written, signed complaint alleging a violation of this chapter, the administrator shall investigate the complaint, take whatever action is warranted, and inform the complainant in writing what actions have been or will be taken.

#### **Section 15-112 Persons Liable.**

The owner, tenant, or occupant of any building or land or part thereof and any architect, builder, contractor, agent or other person who participates in, assists, directs, creates, or maintains any situation that is contrary to the requirements of this chapter may be held responsible for the violation and suffer the penalties and be subject to the remedies herein provided.

#### **Section 15-113 Procedures Upon Discovery of Violations.**

(a) If the administrator finds that any provision of this chapter is being violated, the administrator shall send a written notice to the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it. Additional written notices may be sent at the administrator's discretion.

(b) The final written notice (and the initial written notice may be the final notice) shall state what action the administrator intends to take if the violation is not corrected and shall advise that the administrator's decision or order may be appealed to the board of adjustment as provided in Section 15-91.

(c) Notwithstanding the foregoing, in cases when delay would seriously threaten the effective enforcement of this ordinance or pose a danger to the public health, safety, or welfare, the administrator may seek enforcement without prior written notice by invoking any of the penalties or remedies authorized in Section 15-114.

#### **Section 15-114 Penalties and Remedies for Violations.**

(a) Violations of the provisions of this chapter or failure to comply with any of its requirements, including violations of any conditions and safeguards established in connection with grants of variances, special use permits-B or special use permits-A, or violations of stop work orders, shall constitute a misdemeanor, punishable as provided in G.S. 14-4. **(AMENDED 10/24/89; 6/22/21)**

(b) Any act constituting a violation of the provisions of this chapter or a failure to comply with any of its requirements, including violations of any conditions and safeguards established in connection with the issuance of variances or special use permits-B or special use



## Art. VII - ENFORCEMENT AND REVIEW

permits-A, shall also subject the offender to a civil penalty of up to five thousand dollars (\$5,000.00).

- (1) In determining the amount of the civil penalty assessment, the administrator shall consider the following factors, and the decision levying a civil penalty shall cite those factors deemed applicable:
  - a. The degree and extent of harm to the natural resources of the town and its planning jurisdiction, to the public health, or to private property resulting from the violation;
  - b. The extent to which the violation undermines the regulatory objectives of the land use ordinance;
  - c. The duration and gravity of the violation;
  - d. The cost of rectifying the damage;
  - e. The amount of money saved by noncompliance;
  - f. Whether the violation was committed willfully or intentionally; negligently; or as the result of an unforeseeable or unavoidable accident;
  - g. Whether the violator promptly ceased the violation upon notice by the town and took whatever steps were reasonably possible to limit or correct any damage caused by the violation;
  - h. The prior record of the violator in complying or failing to comply with the provisions of this chapter or any of its requirements, including violations of any conditions and safeguards established in connection with the issuance of variances or special use permits-B or special use permits-A;
  - i. The cost to the town of the enforcement procedures;
  - j. The scope and the scale of the project where the violation occurs;
  - k. Whether the civil penalty is levied for a single day's violation or a single event or whether it is levied on a daily basis for a continuing violation, as authorized under subsection (d) below. Civil penalties levied on a daily basis may cumulatively exceed the \$5,000.00 cap set forth in this subsection.
  - l. Without limiting the authority of the board of adjustment under subsection (e), the board of adjustment may affirm a penalty as

## Art. VII - ENFORCEMENT AND REVIEW

imposed, decrease the amount of the penalty, or increase the amount of the penalty.

- (2) The notice of civil penalty shall inform the violator that the penalty is due upon receipt of the notification and, if applicable, that successive civil penalties of a specified amount shall accrue each day that the violation continues. The notice shall also inform the violator that if the civil penalty is not paid within ten days of receipt of the notice, the penalty may be recovered by the town in a civil action in the nature of debt.
- (3) A civil penalty may be appealed to the Board of Adjustment in accordance with Section 15-91 of this chapter, except that such appeal must be filed within 10 days after receipt by the violator of the notice of civil penalty.
  - a. An appeal of a notice of violation or other enforcement order stays enforcement of the action appealed from and accrual of any fines assessed during the pendency of the appeal to the Board of Adjustment and any subsequent appeal in accordance with G.S. 160D-1402 or during the pendency of any civil proceeding authorized by law or appeals therefrom, unless the official who made the decision certifies to the board after notice of appeal has been filed that, because of the facts stated in an affidavit, a stay would cause imminent peril to life or property or, because the violation is transitory in nature, a stay would seriously interfere with enforcement of the development regulation. In that case, enforcement proceedings are not stayed except by a restraining order, which may be granted by a court. If enforcement proceedings are not stayed, the appellant may file with the official a request for an expedited hearing of the appeal, and the board shall meet to hear the appeal within 15 days after such a request is filed. **(AMENDED 6/22/21)**
  - b. If a civil penalty is levied for a violation about which the violator was previously sent a final notice of violation in accordance with Section 15-113, and the violator did not appeal to the Board of Adjustment within the prescribed time the administrator's determination as to the existence of the violation, an appeal of the civil penalty under this subsection presents only the issue of whether the administrator erred in setting the amount of the civil penalty, not the issue of whether the violation occurred or the violator's responsibility for the violation. **(AMENDED 6/07/88; 4/23/96)**
  - (c) This chapter may also be enforced by any appropriate equitable action.
  - (d) Each day's continuing violation shall be a separate and distinct offense. **(AMENDED 6/07/88; 4/23/96)**

## Art. VII - ENFORCEMENT AND REVIEW

(e) Any one, all, or any combination of the foregoing penalties and remedies may be used to enforce this chapter.

**Section 15-115 Permit Revocation and Building Permit Denial. (AMENDED 10/24/06)**

(a) A zoning, sign, special use permit-A, or special use permit-B may be revoked by the permit-issuing authority (in accordance with the provisions of this section) if the permit recipient fails to develop or maintain the property in accordance with the plans submitted, the requirements of this chapter, or any additional requirements lawfully imposed by the permit issuing board.

(b) Before a special use permit-A or special use permit-B may be revoked, all of the notice and hearing and other requirements of Article VI shall be complied with. The notice shall inform the permit recipient of the alleged grounds for the revocation.

(1) The burden of presenting evidence sufficient to authorize the permit-issuing authority to conclude that a permit should be revoked for any of the reasons set forth in subsection (a) shall be upon the party advocating that position. The burden of persuasion shall also be upon that party. (AMENDED 11/10/81)

(2) A motion to revoke a permit shall include, insofar as practicable, a statement of the specific reasons or findings of fact that support the motion.

(c) Before a zoning or sign permit may be revoked, the administrator shall give the permit recipient ten days notice of intent to revoke the permit and shall inform the recipient of the alleged reasons for the revocation and of his right to obtain an informal hearing on the allegations. If the permit is revoked, the administrator shall provide to the permittee a written statement of the decision and the reasons therefor.

(d) No person may continue to make use of land or buildings in the manner authorized by any zoning, sign, special use permit-B or special use permit-A after such permit has been revoked in accordance with this section.

(e) Building permits required pursuant to G.S. 160A-417 may be denied for lots that have been illegally subdivided. No building permit may be denied, however, if the permit applicant can show that he purchased the lot in good faith (i.e. he did not know and had no reasonable way of knowing that the lot was illegally subdivided) and for value. (AMENDED 10/24/06)

**Section 15-116 Judicial Review. (AMENDED 4/27/82; 10/21/14)**

(a) Every quasi-judicial decision of the board shall be subject to review by the superior court by proceedings in the nature of certiorari pursuant to G.S. 160D-1402. Appeals shall be filed within the times specified in G.S. 160D-1405(d). Appeals in any such case shall be heard by the superior court of Orange County. (AMENDED 6/22/21)

(b) A copy of the writ of certiorari shall be served upon the Town of Carrboro.

**Section 15-117 Stop Work Orders. (AMENDED 10/24/89)**

(a) Whenever the land use administrator determines that a person is engaged in doing work that constitutes, creates, or results in a violation of this chapter and that irreparable injury will occur if the violation is not terminated immediately, the administrator may order the specific part of the work that constitutes, creates, or results in a violation of this chapter to be immediately stopped.

(b) A stop work order issued under this section shall be in writing, directed to the person doing the work and shall state the specific work to be stopped, the specific reasons therefor, and the conditions under which the work may be resumed. A copy of the stop work order shall also be sent forthwith to the owner of the property where the work is taking place and the developer, if different from the owner.

(c) Any person aggrieved by the issuance of a stop work order may appeal the issuance of the order to the Carrboro Board of Adjustment pursuant to Section 15-91 of this chapter. However, notwithstanding subsection 15-91(d), an appeal shall not stay the operation of the stop work order except as provided in subsection (d) of this section.

(d) The board of adjustment shall meet and act upon the appeal within 15 working days after receipt of the appeal notice. If the board fails to comply with this requirement, the stop work order shall be stayed automatically beginning on the day following the expiration of this 15-working-day period, and the stay shall remain in effect until the board of adjustment meets and acts on the appeal.

(e) The notice of hearing requirements set forth in Section 15-102 shall not apply to appeals of stop work orders. However, the staff shall orally notify the appellant of the date, time, and place of the hearing as soon as it has been scheduled and shall send to the appellant a written confirmation of this notice as soon as possible.

(f) Neither the person whom a stop work order is served nor an owner or developer served with a copy under subsection (b) may thereafter cause, suffer, or permit a violation of the order while it remains in effect, except during a period in which the operation of the order is stayed under subsection (d).

**Section 15-118 Statutes of Limitations. (AMENDED 6/22/21)**

(a) Zoning Map Adoption or Amendments. A cause of action as to the validity of any regulation adopting or amending a zoning map adopted under Article XX of this chapter or G.S. 160D-1405 or other applicable law or a development agreement adopted under Article 10 of Chapter 160D of the General Statutes accrues upon adoption of the ordinance and shall be brought within 60 days as provided in G.S. 1-54.1.

(b) Text Adoption or Amendment. Except as otherwise provided in G.S. 160D-1405(a), an action challenging the validity of a development regulation adopted under this chapter or other applicable law shall be brought within one year of the accrual of such action. Such an

**Art. VII - ENFORCEMENT AND REVIEW**

action accrues when the party bringing such action first has standing to challenge the ordinance. A challenge to an ordinance on the basis of an alleged defect in the adoption process shall be brought within three years after the adoption of the ordinance.

(c) **Enforcement Defense.** Nothing in G.S. sections 160D-1405, 1-54(10) or 1-54.1 bars a party in an action involving the enforcement of a development regulation or an action under G.S. 160D-1403.1 from raising as a claim or defense in the proceedings or enforceability or the invalidity of the ordinance. Nothing in G.S. sections 160D-1405, 1-54(10) or 1-54.1 bars a party who files a timely appeal from an order, requirement, decision, or determination made by the administrator contending that the party is in violation of a development regulation from raising in the judicial appeal the invalidity of the ordinance as a defense to the order, requirement, decision, or determination. A party in an enforcement action or appeal may not assert the invalidity of the ordinance on the basis of an alleged defect in the adoption process unless the defense is formally raised within three years of the adoption of the challenged ordinance.

(d) **Termination of Grandfathered Status.** When a use constituting a violation of this chapter is in existence prior to adoption of the Carrboro Land Use Ordinance creating the violation, and that use is grandfathered and subsequently terminated for any reason, the town shall bring an enforcement action within 10 years of the date of the termination of the grandfathered status, unless the violation poses an imminent hazard to health or public safety.

(e) **Quasi-Judicial Decisions.** Unless specifically provided otherwise, a petition for review of a quasi-judicial decision shall be filed with the clerk of superior court by the later of 30 days after the decision is effective or after a written copy thereof is given in accordance with G.S. section 160D-406(j). When first-class mail is used to deliver notice, three days shall be added to the time to file the petition.

(f) **Others.** Except as provided by this section, the statutes of limitations shall be as provided in Subchapter II of Chapter 1 of the General Statutes.

**Section 15-119 through 15-120 Reserved.**