

**ORDINANCE NO. 936 TC 415  
TC-7-18**

**AN ORDINANCE TO AMEND THE PART 10  
RALEIGH UNIFIED DEVELOPMENT ORDINANCE TO MODIFY REGULATIONS  
RELATED TO THE REZONING PROCESS, WAIVERS AND APPEALS**

**WHEREAS**, the City of Raleigh strives to maintain the Unified Development Ordinance;

**WHEREAS**, certain amendments to State Law require an update to language that relates to process;

**WHEREAS**, the City Council has requested amendments that would clarify procedures, remove barriers to certain zoning conditions;

**WHEREAS**, the proposed amendments will improve language and align with State Law;

**WHEREAS**, state law and the Unified Development Ordinance provide a process by which applicants may request a variance from the requirements of the UDO;

**WHEREAS**, any change or amendment to the Comprehensive Plan, the Street Plan, or any other adopted City plan, should be done in accordance with the procedure set forth in state law and the Unified Development Ordinance for Comprehensive Plan amendments;

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF RALEIGH THAT:**

**Section 1.** Section 8.1.1 of the Raleigh Unified Development Ordinance, Applicability, is hereby amended to insert a language shown with underline and remove language shown with strikethrough, as shown below:

**Sec. 8.1.1. Applicability**

- A. This Chapter applies to all development within the City or within the City's extraterritorial jurisdiction as set forth in Sec. 10.2.5.and Sec. 10.2.8.
- B. No construction shall commence until all required plans, profiles and specifications have been reviewed and approved by the City or other governmental approving agency.
- C. No City services or utilities shall be extended or furnished to any development until the applicant has installed the improvements specified in this UDO or guaranteed their installation as provided for in this UDO.
- D. Variances ~~Waivers~~ to this Chapter are heard ~~approved~~ by the Board of Adjustment ~~City Council~~ pursuant to Sec. 10.2.10 ~~10.2.5-E.2~~. The Development Services Director where specifically authorized may approve administrative design adjustments. Any adjustment not approved by the Development Services Director may be appealed to the Board of

Adjustment pursuant to Sec. 10.2.11. ~~in the sole discretion of the developer be brought to the City Council as a waiver request.~~

- E. All improvements must conform with all adopted City plans.

**Section 2.** Section 10.1.3.B of the Part 10 Raleigh Unified Development Ordinance, Specific Approval Authority, is hereby amended by removing language shown in strikethrough as follows:

B. Specific Approval Authority

The Board of Adjustment is responsible for final action regarding:

1. Special use permits;
2. Variances;
3. ~~Subdivision waivers;~~
4. 3. Appeals from administrative decisions; and
5. 4. Appeals in the nature of certiorari of Historic Development Commission decisions granting or denying certificates of appropriateness.

**Section 3.** Section 10.2.4.E.2.e of the Part 10 Raleigh Unified Development Ordinance, Additional Requirements for Conditional Use Applications, is hereby amended to read as follows:

- e. Exclusionary conditions which discriminate based on race or religion, specify ownership status or a minimum value of improvements shall not be submitted as a part of the petition.

**Section 4.** Section 10.2.4.E.2. of the Part 10 Raleigh Unified Development Ordinance, Rezoning, is hereby amended by adding a new subsection k. as follows:

- k. No variance shall be allowed to a zoning condition that is approved in conjunction with a conditional use rezoning.

**Section 5.** Section 10.2.4.E.2 of the Part 10 Raleigh Unified Development Ordinance, Additional Requirements for Conditional Use Applications, is hereby amended by adding a new subsection l as follows:

l. Modification of Previously-Approved Zoning Conditions

When a property has been rezoned into a conditional use district, the property owner can request subsequent modifications to the zoning conditions. If no change is requested to the zoning map, modifications to the language of zoning conditions may be requested by application for a text change, following the process contained in Section 10.2.3 of this UDO. In addition to those procedures, the following shall also apply:

1. Prior to submittal of an application, the applicant shall request authorization for a text change from the City Council to modify the existing zoning conditions. The City Council may allow the petition; reject the petition; or direct further consideration of the request.
2. Upon authorization to proceed, the applicant must conduct a neighborhood meeting consistent with the requirements of Section 10.2.4.D.

3. The text change application must be signed by all property owners of the parcels to which the proposed change in conditions apply. Changes to the conditions through the approval process must be consistent with Section 10.2.4.E.2.
4. The public notice requirements for rezoning map amendments contained in Section 10.2.1.C shall be required.

**Section 6.** Section 10.2.5.E.2 of the Raleigh Unified Development Ordinance, Waivers, is hereby amended by repealing all of the subsection and renumbering the remaining subsections accordingly.

**Section 7.** Section 10.2.5.E.3.a of the Raleigh Unified Development Ordinance, Development Services Department Action, is hereby amended by removing the language shown in strikethrough as follows:

3. Development Services Department Action
  - a. Development Services has the authority to approve preliminary subdivision plans without review by either the City Council or the Board of Adjustment except in the following situations:
    - i. The preliminary subdivision plan is within a Historic Overlay District or of a designated Historic Landmark;
    - ii. The preliminary subdivision plan is located in a -MPOD, other than single-unit living lots;or
    - iii. A ~~Waiver~~ Variance Request is filed.

**Section 8.** Section 10.2.7.D.6, Development Services Officer Action, is hereby amended by removing the language shown in strikethrough and addition of language shown in underline as follows:

6. Any An appeal of this section shall be in accordance with as set forth in Sec. 10.2.11. shall be filed by persons who received notice of the decision within 30 days after the date of the application was decided; this time period is applicable to all representatives of such notified persons, including without limitation their tenants and option holders. For all other persons with standing, notice of appeal shall be filed within 30 days after the initiation of site work activities.

**Section 9.** Section 10.2.8.C.3 of the Raleigh Unified Development Ordinance, Waivers, is hereby amended by repealing all of subsection 3 and renumbering the remaining subsections accordingly.

**Section 10.** Section 10.2.10.A. of the Raleigh Unified Development Ordinance, Variance, Applicability, is hereby amended to insert any language shown below with underlined text:

**A. Applicability**

The Board of Adjustment has the authority to authorize variances from the provisions of this UDO, subject to the requirements of this section. Provided, however, no variance shall be allowed to any provision of this UDO, which would result in an amendment to the 2030 Comprehensive Plan, the Street Plan, or any other adopted City plan. Any change or amendment to such plans or maps must be done in accordance with the process set forth in Sec. 10.2.2. for 2030 Comprehensive Plan amendments.

**Section 11.** Sec. 10.2.11. of the Raleigh Unified Development Ordinance, Appeal of an Administrative Decision, is hereby repealed in its entirety and replaced with the following language:

**A. Applicability**

Any person with standing under N.C. Gen. Stat. § 160A-393(d), or the City of Raleigh, may file an appeal of any decision, order, requirement or determination relating to the interpretation, compliance or application of this UDO made by an administrative official charged with the administration and enforcement of these provisions of the UDO. All appeals shall be filed in accordance with the provisions of this section.

**B. Reviewing Body**

Appeals of an administrative decision are heard by the Board of Adjustment except for Minor Work Certificates of Appropriateness, which are heard by the Raleigh Historic Development Commission.

**C. Stay of Proceedings**

An appeal of a notice of violation or other enforcement order stays enforcement of the action appealed from unless the official who made the decision certifies to the board of adjustment 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 ordinance. In that case, enforcement proceedings shall not be 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 of adjustment shall meet to hear the appeal within 15 days after such a request is filed. Notwithstanding the foregoing, appeals of decisions granting a permit or otherwise affirming that a proposed use of property is consistent with the ordinance shall not stay the further review of an application for permits or permissions to use such property; in these situations, the appellant may request and the board may grant a stay of a final decision of permit applications or building permits affected by the issue being appealed.

**D. Notice of Decision and Filing An Appeal**

1. The official who made the decision shall give written notice of the decision to the owner of the property that is the subject of the decision and to the party who sought the decision, if different from the owner. The written notice shall be delivered by personal delivery, electronic mail, or by first-class mail.
2. The owner or other party shall have 30 days from receipt of the written notice within which to file an appeal. Any other person with standing to appeal shall have 30 days from receipt from any source of actual or constructive notice of the decision within which to file an appeal.
3. An appeal is taken by filing a notice of appeal along with an appeal application stating the grounds for appeal and containing all other required information with the City Clerk.
4. The Department of City Planning shall provide the notices required in *Sec. 10.2.1.C.*

**E. Hearing and Board Action**

1. The official who made the decision shall transmit to the board all documents and exhibits constituting the record upon which the action appealed from is taken. The official shall also provide a copy of the record to the appellant and to the owner of the property that is the subject of the appeal if the appellant is not the owner.
2. Within 90 days after a completed application of an appeal of an administrative decision is filed, the reviewing body shall hold a quasi-judicial public hearing as set forth in Sec. 10.2.1.D.1. and provide notice of the decision as required in Sec. 10.2.1.C.6.
3. The official who made the decision shall be present at the hearing as a witness. The appellant shall not be limited at the hearing to matters stated in the notice of appeal. If any party or the city would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the board shall continue the hearing.
4. The board of adjustment may reverse or affirm, wholly or partly, or may modify the decision appealed from and shall make any order, requirement, decision, or determination that ought to be made. The board shall have all the powers of the official who made the decision.

**F. Appeals from Raleigh Historic Development Commission**

1. The Board of Adjustment shall also hear appeals from Certificate of Appropriateness decisions of the Raleigh Historic Development Commission.
2. These appeals shall be in the nature of certiorari, pursuant to N.C. Gen. Stat. § 160A-388(b)(1)(9).

**G.** Appeals from the Board of Adjustment are to Wake County Superior Court pursuant to N.C. Gen. Stat. § 160A-393.

**Section 12.** Sec. 10.2.14.B.1. of the Raleigh Unified Development Ordinance, is hereby amended by removing the language shown in strikethrough and adding the language show in underline, as follows:

1. An application for an interpretation of this UDO shall be submitted in accordance with Sec. 10.2.1.CB.

**Section 13.** Sec. 10.2.14.C.3. of the Raleigh Unified Development Ordinance, is hereby amended by removing the language shown in strikethrough, as follows:

3. All appeals of the Zoning Enforcement Administrator's written interpretation shall be made to the Board of Adjustment in accordance with Sec. 10.2.11. ~~within 30 days after the date the written interpretation was decided.~~

**Section 14.** Section 11.4.4.F. of the Part 10 Raleigh Unified Development Ordinance, Limitations on Issuance of Permits, is hereby repealed in its entirety and listed as "Reserved for Future Use."

**Section 15.** Where the changes in this ordinance cause a section reference to change, all applicable cross-references throughout the UDO shall also be changed.

**Section 16.** All laws and clauses of laws in conflict herewith are repealed to the extent of such conflict.

**Section 17.** If this ordinance or application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given separate effect and to this end the provisions of this ordinance are declared to be severable.

**Section 18.** This text change has been reviewed by the Raleigh City Planning Commission.

**Section 19.** This ordinance has been adopted following a duly advertised public hearing of the Raleigh City Council.

**Section 20.** This ordinance has been provided to the North Carolina Capital Commission as required by law.

**Section 21.** This ordinance shall be enforced as provided in N.C.G.S. 160A-175 or as provided in the Raleigh City Code. All criminal sanctions shall be the maximum allowed by law notwithstanding the fifty-dollar limit in N.C.G.S. §14-4(a) or similar limitations.

**Section 22.** This ordinance is effective 5 days after adoption.

**Adopted:** April 2, 2019

**Effective:** April 7, 2019

**Distribution:** Planning – Bowers, Crane, Holland  
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*Prepared by the City Attorney's Office and Department of City Planning*