

**ORDINANCE NO. 2019 – 974 TC 419  
TC-2-19**

**AN ORDINANCE TO MODIFY THE REVIEW AND APPROVAL PROCESS FOR DESIGN ADJUSTMENTS**

**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 to align with State Law;

**WHEREAS**, the Unified Development Ordinance provides the regulations and processes for land development approval within the City of Raleigh;

**WHEREAS**, State Law mandates that decisions involving the finding of facts regarding a specific application of an ordinance and the exercise of discretion when applying the standards of the ordinance are quasi judicial in nature and must be made only after following fair trial standards, including but not evidentiary hearings;

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

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

**Section 1.** Section 8.1.1.D of the Part 10 Raleigh Unified Development Ordinance, Applicability, is hereby amended by adding the following language shown in underline and removing the language shown in strikethrough:

D. Variances to this Chapter are heard by the Board of Adjustment pursuant to Sec. 10.2.10. ~~The Development Services Director~~ Board of Adjustment where specifically authorized may approve ~~administrative design adjustments pursuant to Sec. 10.2.18.~~ Any adjustment not approved by the Development Services Director may be appealed to the Board of Adjustment pursuant to Sec. 10.2.11.

**Section 2.** Section 8.3.1. of the Part 10 Raleigh Unified Development Ordinance, Intent, is hereby amended by repealing all of subsection D and renumbering the remaining subsections accordingly.

**Section 3.** Section 8.3.2.A.1 of the Part 10 Raleigh Unified Development Ordinance, Applicability, is hereby amended by adding the following language shown in underline and removing the language shown in strikethrough:

1. Applicability

The block perimeter standards apply to preliminary subdivision plans, final plats and site plans submitted in accordance with Sec. 10.2.5 and Sec 10.2.8 unless modified ~~by either an administrative design adjustment authorized in this UDO, or~~ by a zoning condition contained in an adopted conditional use zoning ordinance.

**Section 4.** Section 8.3.2.B. of the Part 10 Raleigh Unified Development Ordinance, Block Measurement, is hereby amended by repealing all of subsection 6 and renumbering the remaining subsections accordingly.

**Section 5.** Section 8.3.3.D of the Part 10 Raleigh Unified Development Ordinance, Lot Dimensions, is hereby amended by adding the following language shown in underline and removing the language shown in strikethrough:

D. Lot Dimensions

1. Lots that are occupied or are intended to be occupied shall conform with the minimum lot size, lot width and lot depth requirements provided under Chapter 2. Residential Districts, Chapter 3. Mixed Use Districts and Chapter 5. Overlay Districts.

~~2. Exceptions to the minimum lot size, lot width and lot depth requirements fall under the subdivision waiver process and must be approved in accordance with Sec. 10.2.5.E.2.~~

**Section 6.** The first paragraph of Section 8.3.4.C of the Part 10 Raleigh Unified Development Ordinance, Stub Streets, is hereby amended by adding the following language shown in underline and removing the language shown in strikethrough:

C. Stub Streets

Unless modified by either and administrative design adjustment authorized in this UDO, or by a zoning condition contained in an adopted conditional use zoning ordinance, the regulations in subsection C shall apply.

**Section 7.** Section 8.3.4.C. of the Part 10 Raleigh Unified Development Ordinance, Stub Streets, is hereby amended by repealing all of subsection 8.

**Section 8.** The first a paragraph of Section 8.3.5.C.2 of the Part 10 Raleigh Unified Development Ordinance, Driveways for Residential Uses, is hereby amended by adding the following language shown in underline and removing the language shown in strikethrough:

2. Driveways for Residential Uses

Unless modified by either and administrative design adjustment authorized in this UDO, or by a zoning condition contained in an adopted conditional use zoning ordinance, the regulations in subsection C.2 shall apply.

**Section 9.** The first paragraph of Section 8.3.5.C.3 of the Part 10 Raleigh Unified Development Ordinance, Driveways for Mixed Use and Nonresidential Uses, is hereby amended by adding the following language shown in underline and removing the language shown in strikethrough:

3. Driveways for Mixed Use and Nonresidential Uses

Unless modified by either and administrative design adjustment authorized in this UDO, or by a zoning condition contained in an adopted conditional use zoning ordinance, the regulations in subsection C.3 shall apply.

**Section 10.** Section 8.3.5.D of the Part 10 Raleigh Unified Development Ordinance, Cross-Access, is hereby amended by repealing all of subsection 3 and renumbering the remaining subsections accordingly.

**Section 11.** Section 8.3.6 of the Part 10 Raleigh Unified Development Ordinance, Administrative Design Adjustment Findings, is hereby amended by deleting the same in its entirety and inserting the following in lieu thereof:

Sec. 8.3.6. Design Adjustments Relating to Blocks, Lots and Access (Article 8.3).

- A. The Board of Adjustment shall, in accordance with Sec. 10.2.18, approve a design adjustment from the provisions of Article 8.3 relating to blocks, lots and access, upon a showing of all of the findings set forth below.
1. The approved design adjustment meets the intent of this Article;
  2. The approved design adjustment conforms with the Comprehensive Plan and adopted City plans;
  3. The approved design adjustment does not increase congestion or compromise safety;
  4. The approved adjustment does not create any lots without direct street frontage;
  5. The approved design adjustment does not conflict with an approved or built roadway construction project adjacent to or in the vicinity of the site (no design adjustment shall be approved when the City Council has authorized a roadway project in the vicinity, where the roadway design has not yet been finalized); and
  6. The design adjustment is deemed reasonable due to one or more of the following:
    - a. Topographic changes are too steep;
    - b. The presence of existing buildings, stream and other natural features;
    - c. Site layout of developed properties;
    - d. Adjoining uses or their vehicles are incompatible;
    - e. Existing buildings, streams or other natural or man-made obstructions or site layout of developed properties prevent cross access;
    - f. There are steep slopes in excess of 25%;
    - g. Freeways, waterways, railroad lines, pre-existing development, trees conservation areas, stream buffers, cemeteries, open space or easements would make the provisions of a complete block or a stub street infeasible; or
    - h. With respect to the requirement for a stub street, a high intensity non-residential use is located adjacent to a proposed residential subdivision.
- B. If a design adjustment is granted from the requirement to provide cross-access, then bicycle and pedestrian connections shall be provided between abutting properties, except where there is a perennial wet stream crossing of greater than 15 feet in width that interferes with such access.

**Section 12.** Section 8.4.1.A. of the Part 10 Raleigh Unified Development Ordinance, Intent, is hereby amended by repealing all of subsection 3 and renumbering the remaining subsections accordingly.

**Section 13.** Section 8.4.1.E of the Part 10 Raleigh Unified Development Ordinance, Administrative Design Adjustment Findings, is hereby amended by deleting the same in its entirety and inserting the following in lieu thereof:

E. Design Adjustments Relating to New Streets (Article 8.4).

The Board of Adjustment shall, in accordance with Sec. 10.2.18., approve a design adjustment from the provisions of Article 8.4 relating to new streets, upon a showing of all of the findings set below.

1. The approved adjustment meets the intent of this Article;
2. The approved adjustment conforms with the Comprehensive Plan adopted City plans;
3. The approved adjustment does not increase congestion or compromise safety;
4. The approved adjustment does not create additional maintenance responsibilities for the City;
5. The approved adjustment has been designed and certified by a Professional Engineer;
6. The approved adjustment addresses stormwater collection and conveyance and does not adversely impact stormwater collection; and
7. One or more of the following conditions are present:
  - a. an existing building would impede roadway expansion; or
  - b. transitioning from a different street section.

**Section 14.** Section 8.5.1.A of the Part 10 Raleigh Unified Development Ordinance, Intent, is hereby amended by repealing all of subsection 3.

**Section 15.** Section 8.5.1.G. of the Part 10 Raleigh Unified Development Ordinance, Administrative Design Adjustment Findings, is hereby amended by deleting the same in its entirety and inserting the following in lieu thereof:

G. Design Adjustments Relating to Existing Streets (Article 8.5).

The Board of Adjustment shall, in accordance with Sec. 10.2.18., approve a design adjustment from the provisions of Article 8.5 relating to existing streets, upon a showing of all of the findings set below.

1. The approved adjustment meets the intent of this Article;
2. The approved adjustment conforms with the Comprehensive Plan adopted City plans;
3. The approved adjustment does not increase congestion or compromise safety;

4. The approved adjustment does not create additional maintenance responsibilities for the City;
5. The approved adjustment has been designed and certified by a Professional Engineer; and
6. One or more of the following conditions are present:
  - a. an existing building would impede expansion; or
  - b. transitioning from a different street section impedes compliance.

**Section 16.** Section 10.1.3.B of the Part 10 Raleigh Unified Development Ordinance, Specific Approval Authority, is hereby amended by adding the following language shown in underline and removing the language shown in strikethrough:

**B. Specific Approval Authority**

The Board of Adjustment is responsible for final action regarding:

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

**Section 17.** Section 10.1.8 of the Part 10 Raleigh Unified Development Ordinance, Summary of review Authority, is hereby amended by removing the “D” in the City Official Column for the Design Adjustment rows and replacing them with an “R”. The Board of Adjustment column for this same row is hereby amended by replacing the “A-QH” and replacing it with a “D-QH”.

**Section 18.** Section 10.2.18.A of the Part 10 Raleigh Unified Development Ordinance, Applicability, is hereby amended by adding the following language shown in underline and removing the language shown in strikethrough:

**A. Applicability**

~~The Board of Adjustment Development Services Director~~ has the authority to approve a request for ~~a design adjustments to Articles 8.3, 8.4 and 8.5 set forth in this UDO.~~ All design adjustments shall be reviewed in accordance with the provisions of the UDO, including this section and the applicable design adjustment findings. Any design adjustment approved pursuant to this section shall be incorporated into its corresponding site plan or subdivision approval, and shall expire, if at all, upon expiration of such corresponding site plan or subdivision approval.

**Section 19.** Section 10.2.18.C of the Part 10 Raleigh Unified Development Ordinance, Development Services Director Action, is hereby amended by adding the following language shown in underline and removing the language shown in strikethrough:

**C. ~~Board of Adjustment Development Services Director~~ Action**

1. ~~In reviewing the design adjustment, the Development Service shall consult with the heads of the departments of Planning, Public Utilities, Transportation, Parks and Recreation,~~

~~Inspections and the Fire Department to check the proposed request against the requirements of this UDO and other applicable technical requirements of the City.~~

- ~~12. The Board of Adjustment Development Services Director shall consider the applicable intent statements and design adjustment findings for the request and either approve, approve with conditions or deny the request, within 60 days of the receipt of a completed application.~~
- ~~23. Following notice as required in Sec. 10.1.8. and Sec. 10.2.1.C, the Board of Adjustment shall hold a quasi-judicial hearing as set forth in Sec. 10.2.1.D.1 Additional review time may be necessary when the design adjustment involves review by another municipal or state entity or when detailed engineering studies are submitted to or required by the Development Services Director.
  - ~~a. The reasons for such approval or disapproval shall be stated in writing. In accordance with Sec. 10.2.1.C.6., notice of the decision shall be provided to the applicant and the property owner (if the property owner is not the applicant) and to each person who has filed a written request for notice with the Public Works Director prior to their decision.~~
  - ~~b. Within 30 days from the date the application was decided, an appeal of the Public Works Director's action may be made to the Board of Adjustment in accordance with Sec. 10.2.11.~~~~

**Section 20.** All laws and clauses of laws in conflict herewith are repealed to the extent of such conflict.

**Section 21.** 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 22.** This text change has been reviewed by the Raleigh City Planning Commission.

**Section 23.** This ordinance has been adopted following a duly advertised public hearing of the Raleigh City Council.

**Section 24.** This ordinance has been provided to the North Carolina Capital Commission as required by law.

**Section 25.** 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 26.** This ordinance is effective June 23, 2019.

**ADOPTED: June 18, 2019**  
**EFFECTIVE: June 23, 2019**  
**DISTRIBUTION: Management DL**