

**ORDINANCE NO. (2021) 203 TC 446
TC-18-20
CITY COUNCIL QUASI-JUDICIAL HEARING MATTERS**

**AN ORDINANCE TO AMEND THE PART 10 RALEIGH UNIFIED DEVELOPMENT
ORDINANCE REGARDING CITY COUNCIL QUASI-JUDICIAL HEARING MATTERS**

WHEREAS, the City Council is predominantly a legislative body allowing it to openly resolve issues with the benefit of untethered discussions with constituents; and

WHEREAS, presently, City Council is responsible for final decision of appeals and variance requests related to Chapter 9 of the Unified Development Ordinance, following quasi-judicial procedures and conducting evidentiary hearings; and,

WHEREAS, quasi-judicial procedures and the rules governing evidentiary hearings greatly restrict and limit the City Council’s ability to interact with its constituents regarding quasi-judicial matters and receiving public opinion comments; and

WHEREAS, such restrictions and limitations frustrate constituent access to their elected representatives; and

WHEREAS, the City Board of Adjustment is authorized and accustomed to handling quasi-judicial matters and conducting evidentiary hearings; and

WHEREAS, the City Council deems it appropriate that the Board of Adjustment be responsible for the final decision of appeals and variances related to Chapter 9.

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

Section 1. Section 9.2.6 of the Part 10 Raleigh Unified Development Ordinance, Variances and Appeals, is hereby deleted.

Section 2. Section 9.3.10 of the Part 10 Raleigh Unified Development Ordinance, Variances and Appeals, is hereby deleted.

Section 3. Section 9.3.5.A.4.e. of the Part 10 Raleigh Unified Development Ordinance, Floodway Fringe and Future Hazard Areas, is hereby amended by insertion of the following underlined provisions and deleting the language shown with a strike-through:

- e. Appeals from decisions of the Engineering Services Director shall be to the ~~City Council~~ Board of Adjustment; and

Section 4. Section 9.3.5.C. of the Part 10 Raleigh Unified Development Ordinance, Floodway Fringe and Future Hazard Areas, Limits of Development, is hereby amended by insertion of the following underlined provisions and deleting the language shown with a strike-through:

C. Limits of Development

The lot coverage of any lot may not exceed 50% of the portion of the floodway fringe or future conditions flood hazard areas on that lot, with the following

exceptions.

1. Uses permitted in floodways.
2. Ground level loading areas, parking areas, heliports and other similar ground level uses.
3. Any lot ½ acre or less in size which was recorded prior to May 2, 2006.
4. No existing or approved structure, for which a building permit has been issued prior to May 2, 2006, shall be considered a nonconforming structure. In the event of damage to such a structure by flood or other casualty requiring a substantial improvement of said structure, the structure may be repaired or rebuilt with:
 - a. An administrative approval by the Floodplain Administrator, if all of the following are met:
 - i. The land use existing at the time of the flood or other casualty remains the same;
 - ii. The area of the footprint of the structure does not increase; and
 - iii. There is no rise in the Base Flood Elevation or, if there is any rise in the Base Flood Elevation, as determined by a Flood Study identifying upstream and downstream structures that will be impacted, it will:
 - a) Not raise the levels of the base flood or future conditions flood onto impacted structures; and
 - b) Not redirect velocities of water onto impacted structures.
 - b. A variance by the ~~City Council~~ Board of Adjustment, if all of the following are met:
 - i. The land use existing at the time of the flood or other casualty remains the same;
 - ii. The area of the footprint of the structure does not increase;
 - iii. There are unique circumstances applicable to the site such that strict adherence to the provisions of this Article will result in unnecessary hardship or create practical difficulties; and
 - iv. The variance granted is the minimum necessary to maintain the land use
 - v. A written request for a variance shall be submitted to the City Clerk and shall state the specific variance sought, the justification for the variance and what measures will be taken to ensure the requirements of this Article have been met to the maximum extent practicable.
 - c. An administrative approval by the Floodplain Administrator for any redevelopment that does not increase the flood elevation and that decreases the bulk of an existing building or structure below the base flood or future conditions flood level by at least 25% of the portion exceeding 50% of the floodway fringe or future conditions flood hazard areas. Any additional fill or material being added as a part of the redevelopment shall be included for calculation of the bulk of the proposed redevelopment. A written request for a variance shall be submitted to the Floodplain Administrator.
5. Notwithstanding the preceding exceptions, the ~~City Council~~ Board of Adjustment may approve a variance to the 50% lot coverage limitation where the following conditions are met:

- a. There are unique circumstances applicable to the site such that strict adherence to the provisions of this Article will result in unnecessary hardship or create practical difficulties;
 - b. The variance is in harmony with the general purpose and intent of this Article; and
 - c. In granting this variance, public safety and welfare has been assured and substantial justice has been done.
 - d. A written request for a variance shall be submitted to the City Clerk and shall state the specific variance sought, the justification for the variance and what measures will be taken to insure the requirements of this Article have been met to the maximum extent practicable.
6. Upon a determination that the extent of the development limit will deprive the land owner of reasonable use of their property, the ~~City Council~~ Board of Adjustment may allow development in excess of the 50% lot coverage limitation of the floodway fringe or future conditions flood hazard areas.

Section 5. Section 9.4.8 of the Part 10 Raleigh Unified Development Ordinance, Appeals, is hereby amended by insertion of the following underlined provisions and deleting the language shown with a strike-through:

Sec. 9.4.8. Appeals

- A. Except as provided in *Sec. 9.4.8.D.* below, the disapproval or required modification of any proposed erosion control plan or the refusal to issue a grading or other necessary permit by the City shall entitle the person who submitted the plan or applied for the permit to appeal this decision to the ~~City Council~~ Board of Adjustment pursuant to *Sec. 10.2.11.* Where the deadlines and procedures set forth in *Sec. 10.2.11.* conflict with the deadlines and procedures of this *Sec. 9.4.8.*, the deadlines and procedures of this *Sec. 9.4.8.* shall prevail.
- B. Appeal must be made in writing to the City Clerk and the Engineering Services Director within 15 days of written notice of disapproval or modification of plan or refusal to issue a permit.
- C. No appeal, other than to reduce the width of the natural resource buffer yards, that would be inconsistent with either the Standards of the Water Supply Watershed Act, N.C. Gen. Stat. §143-214.5 or the regulations adopted pursuant thereto shall be granted without the prior approval of the Environmental Management Commission.
- D. Upon receipt of an appeal, the City shall notify in writing and in sufficient time to allow a reasonable comment period, all other local governments having jurisdiction within the water supply watershed. Each year the City will transmit to the Environmental Management Commission a report on each appeal it receives.
- E. Hearings held pursuant to this section shall be held by the ~~City Council~~ Board of Adjustment within 30 days from the date the appeal is filed in the City Clerk's office. The ~~City Council~~ Board of Adjustment shall then render a decision no later than 21 days following said hearing.
- F. If the ~~City Council~~ Board of Adjustment upholds the disapproval or modification of a proposed soil erosion and sedimentation control plan following the hearing, the person submitting the plan shall within 15 days following the decision of the ~~City Council~~ Board of Adjustment be entitled to appeal the ~~City Council's~~ Board of Adjustment's action to

the Sedimentation Control Commission pursuant to Title 15 4B.0018(b) of the North Carolina Administration Code and N.C. Gen. Stat. §113A-61(c).

- G. In the event that an erosion control plan is disapproved, the City shall notify the Director of the Division of Land Resources of the North Carolina Department of Environment, Health and Natural Resources of such disapproval within 10 days. The City shall advise the applicant and the Engineering Services Director in writing as to the specific reasons that the plan was disapproved. Notwithstanding the provisions of *Sec. 9.4.8.A.* through *Sec. 9.4.8.C.* above, the applicant may appeal the City’s disapproval of the plan directly to the Sedimentation Control Commission.
- H. Judicial review of the final action of the erosion plan review committee of the Sedimentation Control Commission may be had in Superior Court of Wake County.

Section 6. Section 9.4.13 of the Part 10 Raleigh Unified Development Ordinance, Variances and Appeals, is hereby deleted.

Section 7. Section 9.5.6. of the Part 10 Raleigh Unified Development Ordinance, Variances and Appeals, is hereby deleted.

Section 8. Section 10.1.1.B. of the Part 10 Raleigh Unified Development Ordinance, City Council – Specific Approval Authority, is hereby amended by insertion of the following underlined provisions and deleting the language shown with a strike-through:

B. Specific Approval Authority

The City Council is responsible for final action regarding:

- 1. Comprehensive Plan amendments;
- 2. Text amendments to this UDO;
- 3. Rezonings;
- 4. Subdivision approvals in the Metro Park Overlay District other than single unit living;
- 5. ~~Historic landmark designations; and~~
- 6. Amendments to floodprone area maps.
- 7. ~~Variances to *Article 9.2 Stormwater Management, Article 9.3 Floodprone Area Regulations, Article 9.4 Sedimentation and Erosion Controls* or *Article 9.5 Watershed Protection Areas.*~~
- 8. ~~Appeals of Administrative Decisions involving *Article 9.2 Stormwater Management, Article 9.3 Floodprone Area Regulations, Article 9.4 Sedimentation and Erosion Controls* or *Article 9.5 Watershed Protection Areas.*~~

Section 9. Section 10.1.8. of the Part 10 Raleigh Unified Development Ordinance, City Council – Specific Approval Authority, is hereby amended by deleting the language shown with a strike-through:

Delete the row titled “Subdivisions in an -MPOD (other than single-unit living)”.

Delete footnote (8) and every reference to same found in the table.

Section 10. Section 10.2.5.E. of the Part 10 Raleigh Unified Development Ordinance, Preliminary Subdivision Approval Process, is hereby amended by insertion of the following underlined provisions and by deleting the language shown with a strike-through:

2. Development Services Department Action

- a. Development Services has the authority to approve preliminary subdivision plans without review by either the Historic Development Commission, ~~City Council~~ or the Board of Adjustment except in the following situations in accordance with *Sec. 10.1.8.*:
 - i. The preliminary subdivision plan is within a Historic Overlay District or of a designated Historic Landmark; or
 - ii. ~~The preliminary subdivision plan is located in a MPOD, other than single-unit living lots; or~~
 - iii. A Variance Request is filed.

Section 11. This text change has been reviewed by the Raleigh Planning Commission.

Section 12. This ordinance has been adopted following a duly advertised legislative hearing of the Raleigh City Council.

Section 13. This ordinance has been provided to the North Carolina Capital Planning Commission as required by law.

Section 14. 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 15. This ordinance is effective 5 days after adoption.

ADOPTED: **March 2, 2021**

EFFECTIVE: **March 7, 2021**

DISTRIBUTION: Planning & Development – Young, Bowers, Crane, Waddell, Ray, Rametta,
Hosey, Bailey-Taylor, Hodge

City Attorney – Tatum, Hofmann, York, Hargrove-Bailey

Department Heads

Transcription Svcs – Taylor