



TOWN OF KNIGHTDALE

PLANNING DEPARTMENT

www.knightdalenc.gov

950 Steeple Square Court
Knightdale, NC 27545
(v) 919.217.2241
(f) 919.217.2249

ORD #13-11-04-004
AN ORDINANCE TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE
OF THE TOWN OF KNIGHTDALE,
REGARDING THE COMPLIANCE OF THE UNIFIED DEVELOPMENT ORDINANCE WITH
SESSION LAW 2013-126

WHEREAS, the Town of Knightdale has received a petition to amend Section 14.3A (Land Use Review Board [LURB]) and Chapter 15 (Development Process) of the Unified Development Ordinance by making the changes necessary to bring the UDO into compliance with Session Law 2013-126, also known as House Bill 276; and

WHEREAS, the application includes the amendment of other remaining chapters of the Unified Development Ordinance that may be affected by the proposed amendments to Section 14.3A and Chapter 15, such as updating code section references and locations, the ordinance table of contents and index, as well as adding/amending definitions in Chapter 19 for consistency; and

WHEREAS, the Town of Knightdale Unified Development Ordinance Section 15.6B establishes uniform procedures for amending the text of the Ordinance; and

WHEREAS, the proposed zoning text changes reasonable in that they reflect the current status of state law in regard to the matters at hand;

NOW, THEREFORE BE IT ORDAINED by the Town Council of the Town of Knightdale, North Carolina:

SECTION 1. That the Unified Development Ordinance of the Town of Knightdale Code be amended to read as follows (*editing notes in parenthetical italics*):

Section 14.3 Board of Adjustment Responsibilities and Duties

- A. Town Council:** The Town Council shall serve as the Board of Adjustment in cases of Appeals of decisions by the TRC (*Section 15.5C*) and Special Use Permits (*Section 15.5E*). Hearings shall be conducted in accordance with the provisions of the UDO and N.C.G.S. §160A.388 as may be amended from time to time.
- B. Land Use Review Board (LURB):** The LURB shall serve as the Board of Adjustment in cases of Design Exceptions (*Section 15.5B*), Appeals of decisions by the Administrator (*Section 15.5C*), Variances (*Section 15.5E*) and any other matters the LURB is required to act upon in a quasi-judicial manner as directed by any other town ordinance or state law. Hearings shall be conducted in accordance with the provisions of the UDO and N.C.G.S. §160A.388 as may be amended from time to time.

Section 14.4...

- A. Land Use Review Board (LURB):** For the purposes of this Ordinance, the LURB shall serve as the Town's Planning Board, the Community Appearance Commission and the Tree Board. Furthermore, a portion of the LURB membership shall serve as the Board of Adjustment for cases identified in Section 14.3.

1. Appointment and Terms

- a. **Number:** There shall be a LURB consisting of nine (9) members.
 - i. **Town Members:** Six (6) members, appointed by the Town Council, shall reside within the corporate limits. Three (3) of the Town Council appointees shall also be named as quasi-judicial voting members of the Board of Adjustment.
 - ii. **ETJ Members:** Three (3) members appointed by the Wake County Board of Commissioners, shall reside within the Town's extra-territorial jurisdiction. Two (2) of the Wake County Board of Commissioners appointees shall also be named as quasi-judicial voting members of the Board of Adjustment. If despite good faith efforts, enough residents of the ETJ cannot be found to fill the seats reserved for residents of such area, then the Wake County Board of Commissioners may appoint other residents of the county (including residents of the Town) to fill these seats. If the Wake County Board of Commissioners fails to make these appointments within 90 days after receiving a resolution from the Town Council requesting that they be made, the Town Council may make them.
- b. **Board of Adjustment Alternates:** The remaining four (4) LURB members not named as quasi-judicial voting members of the Board of Adjustment in subsections 1(a)(i) and 1(a)(ii) above shall serve as voting alternates. When not filling in as an alternate for absent or excused named voting members of the Board of Adjustment, the remaining LURB members may participate in the quasi-judicial deliberations and fact finding efforts; however, they may not vote.
- c. **Citizen Planning Academy:** Prior to being seated with full voting rights, newly appointed members shall be required to attend and complete the Town's Citizen Planning Academy or its training equivalent. The Academy is a function of the Town's Planning Department and is also open to the general public. It shall be offered at least once each year to ensure that any LURB appointee will have the opportunity to take the class prior to attending their first LURB meeting.
- d. **Staggered Terms:** LURB members shall be appointed for three-year (3-year) staggered terms. Members shall continue to serve until their successors have been appointed.
- e. **Term Limits:** No person, either appointed or re-appointed by the Town Council, may serve more than two (2) consecutive full terms on LURB. A person who has served two (2) consecutive full terms shall be eligible for re-appointment after a lapse in service of at least 12 months.
- f. **Attendance:** In-town members of the LURB may be removed by the Town Council at any time for failure to attend three (3) consecutive meetings or for failure to attend 75 percent (75%) or more of the meetings within any 12-month period or for any other good cause related to performance of duties. ETJ members who fail to attend three (3) consecutive meetings or who fail to attend 75 percent (75%) or more of the meetings within any 12-month period or for any other good cause related to performance of duties shall be recommended for removal to the Wake County Board of Commissioners.
- g. **Relocation:** If a town member moves outside the town, or if an ETJ member moves outside the extra-territorial planning jurisdiction, that shall constitute a resignation from the board.

2. Officers

- a. **Elections and Terms:** At the first regularly scheduled meeting following the annual appointment of members, the LURB shall select from among its members a Chair and Vice-Chair. These officers shall serve for a period of not more than two (2) consecutive 1-year terms in the same capacity.
- b. **Responsibilities and Duties:** The Chair shall preside over the LURB as a non-voting member (except in the case of breaking a tie), decide all points of order or procedure using the latest edition of "*Robert's Rules of Order*", and transmit reports and recommendations of LURB to the Town Council. The Vice-Chair shall assume the duties of the Chair in his/her absence. The Chair and Vice-Chair may take part in all deliberations during the legislative segment.
- c. **Board Clerk Assigned:** The clerk to the LURB shall be a Town staff member assigned by the Administrator.

3. Meetings

- a. **Schedule:** The LURB shall establish a regular meeting schedule and shall meet frequently enough, at least monthly if necessary, so as to take action as expeditiously as possible on the items of business.
- b. **Open Meetings:** All LURB meetings shall be open to the public, and whenever feasible, the agenda for each meeting shall be made available in advance of the meeting
- c. **Rules of Procedure:** All meetings shall be conducted using the latest edition of "*Robert's Rules of Order*". The LURB may adopt rules of procedure governing its quasi-judicial procedures and operations not inconsistent with the provisions of this Ordinance.
- d. **Board of Adjustment Items:** The meetings of the LURB shall include a segment dedicated to the Board of Adjustment, including but not limited to final quasi-judicial decisions on appeals, variances, interpretations and other items as required by this Ordinance. This portion of the meeting shall precede legislative action items on the LURB's agenda. A separate record of minutes and attendance shall be kept of all segments of LURB meetings dedicated to the Board of Adjustment.

4. Responsibilities and Duties

- a. **Board of Adjustment:** See Section 14.3

...

5. Quorum and Voting

- a. **Legislative Items**
 - i. **Quorum:** A quorum shall be the simple majority of the LURB membership excluding vacant seats. A quorum is necessary to take official action.
 - ii. A member who has withdrawn from the meeting without being excused shall be counted as present for the purposes of determining whether a quorum is present.
 - iii. All actions of the LURB during the legislative portion shall be taken by simple majority vote of those present and voting, a quorum being present.
 - iv. All members of the LURB shall serve as voting members during the legislative portion except the Chair as noted in subsection "2b" above.

- v. Once a member is physically present during the legislative portion of a LURB meeting, any subsequent failure to vote shall be recorded as an affirmative vote unless the member has been excused.
- vi. Since the legislative portion of the LURB has advisory authority, it need not conduct its meetings strictly in accordance with quasi-judicial procedures. However, it shall conduct its meetings so as to obtain necessary information and to promote the full and free exchange of ideas.
- vii. During the legislative portion of the LURB meeting, the entire Board shall formulate recommendations on matters referred to it by the Town Council. Such matters shall include but not be limited to: zoning map amendments, zoning text amendments, special use permit applications, preliminary subdivision plats and amendments to the Comprehensive Plan.

b. Board of Adjustment Cases

- i. **Quorum:** A quorum for the quasi-judicial segment involving Board of Adjustment cases shall consist of a super-majority (*four-fifths*) of the Board of Adjustment membership (*excluding vacant seats or disqualified members in the absence of qualified alternates*) for Variance cases and equal to a simple majority of the Board of Adjustment membership for all others. A quorum is necessary for the LURB to take action.
- ii. A member who has withdrawn from the meeting without being excused shall be counted as present for purposes of determining whether a quorum is present.
- iii. Concurring vote of a super-majority (*four-fifths*) of the regular voting membership (*excluding vacant seats or disqualified members in the absence of qualified alternates*) shall be necessary to grant any Variance. All other actions during the quasi-judicial segment shall be taken by simple majority vote of the eligible voting members.
- iv. Once a member is physically present during the quasi-judicial segment of a LURB meeting, any subsequent failure to vote shall be recorded as an affirmative vote unless the member has been excused in accordance with subsection “v” below. If a quasi-judicial voting member is either absent from the LURB meeting or has been excused in accordance with this Ordinance, he or she shall be replaced by an alternate at any time during the quasi-judicial portion.
- v. A member shall be excused from voting on a particular issue by majority vote of the remaining quasi-judicial voting members present under the following circumstances:
 - a) If the member has a direct financial interest in the outcome of the matter at issue; or
 - b) If the matter at issue involves the member's own official conduct; or
 - c) If participation in the matter might violate the letter or spirit of a member's code of professional responsibility; or
 - d) If a member has such close personal ties to the applicant that the member cannot reasonably be expected to exercise sound judgment in the public interest; or
 - e) If a member has had undisclosed ex parte communications; or
 - f) If a member has a fixed opinion prior to hearing that matter that is not susceptible to change.
- vi. A roll call vote shall be taken upon the request of any member.

6. **Annual Report:** At least once a year, the Chair of the LURB shall submit to the Town Council an annual report summarizing its activities during the previous year.

...

Section 15.3...

E. **Written Decision**

Any decision made by the Town Council or the LURB regarding an appeal, variance, Special Use Permit, Special Use Permit modification, Zoning Map Amendment or Zoning Text Amendment shall be reduced to writing, signed by the board Chair or other duly authorized board member, and served upon the applicant and all other persons who make a written request for a copy. Decisions are deemed as served when delivered in person, or when sent via electronic mail or first-class mail. Unless otherwise stated, all decisions shall be effective upon filing with the clerk to the board. As applicable, the written decision shall include:

- a statement of the ultimate disposition of the case by the board;
- findings and conclusions of the board;
- supporting reasons or facts; and
- other information deemed appropriate.

Section 15.4A...

3. **Right of Appeal**

If a request for an administrative permit is denied, or if a ruling of the Administrator or TRC is questioned, any aggrieved party may appeal such ruling to the LURB and Town Council, respectively, in accordance with Section 15.5C.

...

Section 15.5...

A. **General Provisions...**

2. **Right of Judicial Appeal:** Every quasi-judicial decision of the LURB or the Town Council shall be subject to review by the Superior Court Division of the General Courts of Justice of the State of North Carolina by proceedings in the nature of certiorari. Any petition for review by the Superior Court shall be duly verified and filed with the Clerk of Superior Court within 30 days after the effective date of the decision, or after a written copy is served in accordance with the provisions of Section 15.3E, whichever is later. In the event any decision is served via first-class mail, three (3) days shall be added to the allowed time in which to file a petition for review.

...

C. **Administrative Appeals**

1. **Applicability:** The LURB or Town Council shall hear and decide appeals from and review any order, requirement, decision, interpretation or citation made by the Administrator or TRC, respectively, and apply such interpretation to particular fact situations.
2. **Applicant with Standing:** The following persons and entities shall have standing to file an appeal under this section:

- a. Any person meeting any of the following criteria:
 - i. Has an ownership interest in; a leasehold interest in; or an interest created by easement, restriction or covenant in the property that is the subject of the decision being appealed; or
 - ii. Has an option or contract to purchase the property that is the subject of the decision being appealed; or
 - iii. Was an applicant before the decision-making authority whose decision is being appealed.
 - b. Any other person who will suffer special damages as the result of the decision being appealed.
 - c. An incorporated or unincorporated association to which owners or lessees of property in a designated area belong by virtue of their owning or leasing property in that area, or an association otherwise organized to protect and foster the interest of the particular neighborhood or local area, so long as at least one (1) of the members of the association would have standing as an individual to challenge the decision being appealed, and the association was not created in response to the particular development or issue that is the subject of an appeal.
 - d. The LURB or Town Council when it believes the Administrator or TRC, respectively, has been inconsistent with the proper interpretation of the Ordinance.
3. **Filing:** An appeal by the property owner to the appropriate board shall be made within 30 days of receipt of the written notice stating the decision, order, determination or interpretation made by the Administrator or TRC. An appeal by any other person with standing shall be made within 30 days of the receipt of any actual or constructive notice regarding the decision, order, determination or interpretation made by the Administrator or TRC.
- a. **Timely Hearing and Decision:** An appeal must be placed on the appropriate board agenda within 30 days of filing, and a decision shall be reached within a reasonable amount of time.
 - b. **Enforcement Proceedings Stayed:** The filing of any application stays all enforcement proceedings unless the Administrator certifies by facts stated in an affidavit that a stay in his/her opinion will cause imminent peril to life or property, or that because the violation charged is transitory in nature, a stay would seriously interfere with the enforcement of the Ordinance. In that event, enforcement proceedings shall not be stayed except by a restraining order granted by a judicial court of law.
 - **Expedited Hearing:** If enforcement proceedings are not stayed, the appellant may request from the Administrator an expedited hearing, in which case, the LURB shall conduct said hearing within 15 days after such request has been filed.
 - c. **Other Review Proceedings Not Stayed:** Notwithstanding the foregoing, appeals of decisions granting a permit or otherwise affirming that a proposed use of property is consistent with this Ordinance shall not stay further review of an application for permits or permissions to use such property. In said situations, the appellant may request and the LURB may grant a stay of any final decision concerning permit applications or building permits affected by the appeal.

4. **Board Powers and Responsibilities:** The appropriate board may, after having held a public hearing on the matter, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed. The appropriate board shall have all the powers of the Administrator in making any order, requirement, decision, interpretation or determination with reference to an appeal. For appeals of TRC decisions involving administrative permits requiring a Master Plan, the Town Council must make the following findings to overturn the original decision:
- a. The plan is consistent with Comprehensive Plan goals and objectives and all other Town Council adopted development policies;
 - b. The plan complies with all applicable requirements of this Ordinance, including but not limited to the development and design standards of chapters 4 and 5 as well as the dedication and improvements provisions of chapters 9 and 17;
 - c. The plan adequately protects other adjacent or nearby property, or residential uses located on the same property, from the potential adverse effects of the proposed development;
 - d. The plan provides harmony and unity with the development of adjacent and nearby properties;
 - e. The plan provides safe conditions for pedestrians and motorists and prevents a dangerous arrangement of pedestrian and vehicular ways; and
 - f. The plan provides safe ingress and egress for emergency services.
5. **Simple Majority Required:** The concurrent simple majority vote of the appropriate board's voting members shall be necessary to make an interpretation of the Ordinance, or reverse any administrative order, requirement, decision or determination. In all matters coming before either board, the applicant shall have the burden of providing clear, competent and material evidence in support of the application.

D. Variances

1. Applicability:

- a. **In General:** When unnecessary hardships would result from carrying out the strict letter of this Ordinance and the required findings of fact set forth in Section 15.5D(4)a are made, the LURB shall vary any of the regulations or provisions of this Ordinance.
- b. **Flood Damage Protection:** Variances related to Flood Damage Protection may be issued for:
 - i. The repair or rehabilitation of historic structures upon the determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and that the variance is the minimum necessary to preserve the historic character and design of the structure; or
 - ii. Functionally dependent facilities as defined in Chapter 19 provided provisions of Section 15.12(D)(6) and (7) have been satisfied, and such facilities are protected by methods that minimize flood damages; or
 - iii. Any other type of development, provided it meets the requirements stated in this section.

- c. **Items Not Cause for Variance:**
 - i. The request for a particular use expressly, or by inference, prohibited in the District involved.
 - ii. Hardship resulting from personal circumstances.
 - iii. Hardship resulting from conditions that are common to the neighborhood or the general public.
 - iv. Any request that will cause a structure to be in violation of other Federal, State, or local laws, regulations or ordinances.
 - v. Any request within any designated floodway or non-encroachment area where the variance would result in any increase in flood levels during the base flood discharge.

- 2. **Applicant with Standing:** A petition for a variance may be initiated only by the owner of the affected property, an agent authorized in writing to act on the owner's behalf or a person having a written contractual interest in the affected property upon the submission of a completed application.

- 3. **Enforcement and Other Proceedings Stayed:** The filing of any application stays all proceedings unless the Administrator certifies by facts stated in an affidavit that a stay in his/her opinion will cause imminent peril to life or property, or that because the violation charged is transitory in nature, a stay would seriously interfere with enforcement of the Ordinance. In that event, proceedings shall not be stayed except by a restraining order granted by a judicial court of law.

- 4. **Board Powers and Responsibilities**
 - a. **Required Findings of Fact:** The LURB, after having held a public hearing on the matter, may grant or deny a variance based on the following:
 - i. **General Required Findings of Fact:** The LURB must make the following determinations of fact for all variance requests:
 - a) Unnecessary hardship would result from the strict application of the Ordinance;
 - b) The identified hardship is the result of conditions peculiar to the property, such as location, size and/or topography;
 - c) The identified hardship did not result from actions taken by the applicant or property owner; and
 - d) The variance is consistent with the spirit, purpose and intent of this Ordinance, such that public safety is secured and substantial justice is achieved.
 - ii. **Flood Damage Prevention:**
 - a) **Specific Procedures:** Variances to flood damage prevention requirements shall only be issued prior to development permit approval. To assure that any such variance is consistent with the spirit, purpose and intent of the Ordinance, in passing upon variances to flood damage prevention requirements, the LURB shall consider all technical evaluations, all relevant factors and all standards specified in other sections of this Ordinance including:
 - ...

b) **Additional Required Findings of Fact:** To assure that any such variance is consistent with the spirit, purpose and intent of the Ordinance, Flood Damage Prevention variances shall only be issued upon the LURB determining the following findings of fact, in addition to those findings enumerated in Section 15.5D(4)a:

...

iii. **Adult Establishments and Sweepstakes Centers:** To assure that any such variance is consistent with the spirit, purpose and intent of the Ordinance, variances to the minimum distance between adult establishments and/or sweepstakes centers shall only be issued upon the following findings of fact, in addition to those findings enumerated in Section 15.5D(4)a:

...

- b. **Conditions to Motion:** The LURB in granting a variance may impose appropriate conditions and safeguards in conformity with this Ordinance, provided such conditions are reasonably related to the variance. Violation of such conditions and safeguards, when made a part of the terms under which a variance is granted, shall be deemed a violation of this Ordinance and shall be punishable as prescribed in Chapter 18.
 - c. **Supermajority Required for Decision:** The concurrent supermajority vote of four-fifths ($\frac{4}{5}$) of the voting members of the LURB shall be necessary to grant a variance. In all matters coming before the LURB, the applicant shall have the burden of providing clear, competent and material evidence in support of the application.
 - d. **Other Considerations:** It shall not be necessary for the applicant to demonstrate that, in the absence of a variance, no reasonable use can be made of the property. Additionally, 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.
 - e. **Time for Decision:** The LURB shall hold a public hearing on an application no later than 60 days after a complete application has been filed with the Administrator. The LURB shall decide on the matter which was presented at the public hearing within 45 days of the close of the public hearing.
5. **Time Limit on Approval:** If an application for a variance is approved by the LURB, the owner of the property shall have the ability to (i) develop the use in accordance with the stipulations contained in the variance or (ii) develop any other use listed as a "permitted use" for the District in which it is located. Unless otherwise authorized by the LURB and included in its decision to grant a variance, an order of the LURB in granting a variance shall expire if a building permit or CO (*for a use for which a building permit is not required*) has not been obtained within two (2) years from the date of its decision.
6. **Effect of Denial/Time to Resubmit:** Upon the denial of an original application, or upon the denial of an application from which a re-hearing has been conducted, a similar application may not be filed for a period of one (1) year after the date of denial of the original application.

SECTION 2. That all laws and clauses of law in conflict herewith are hereby repealed to the extent of said conflict.

SECTION 3. That if this ordinance or application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions of this ordinance which can be given separate effect and to the end the provisions of this ordinance are declared to be severable.

SECTION 4. That this ordinance has been adopted following a duly advertised public hearing of the Town Council and following review and recommendation by the Land Use Review Board.

SECTION 5. That this ordinance shall be enforced as provided in G.S. 160A-175 or as provided for in the Knightdale Town Code.

SECTION 6. That this ordinance shall become effective upon its adoption by Town Council.

Adopted this 4th day of November, 2013.

Russell B. Killen, Mayor

ATTEST:

Suzanne M. Yeatts, Town Clerk

APPROVED AS TO FORM:

Clyde Holt, III; Town Attorney