



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, MAY 16, 2024

Item	Topic/Action	Person/Agency	Time (Approx)
I.	AGENDA ADJUSTMENTS	Chair	7:30
II.	APPROVAL OF MINUTES		
	May 2, 2024, Meeting Minutes	Chair/Planning Board	7:35
III.	OTHER MATTERS		
	Proposed Text Amendments to LUO relating to multiple topics.	Chair/Planning Board	7:40
IV.	ADJOURNMENT	Chair	9:00

**To view the advisory board meeting, please use the link below or contact staff at cmoon@carrboronc.gov.*

<https://townofcarrboro.zoom.us/j/89127704751?pwd=Gi1kX0pW3XSNWthxCQ9kPNIZAKsmSC.1>

Passcode: 237665

Or One tap mobile

+13126266799,,89127704751# US (Chicago)

+16469313860,,89127704751# US

PUBLIC COMMENT AT PLANNING BOARD MEETINGS

If members of the public wish to address the Planning Board, 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-minute time limit.

TOWN HALL IS ACCESSIBLE FOR PERSONS WITH DISABILITIES.

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



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TOWN OF CARRBORO

PLANNING BOARD MEETING

301 West Main Street, Carrboro, North Carolina 27510

THURSDAY, MAY 2, 2024 – REMOTE MEETING

MEMBERS	GUESTS	STAFF
Rachel Gaylord-Miles, Chair	Craig Boyles, applicant	Tina Moon
Bruce Sinclair, Vice-Chair	Jim Spencer, applicant	Duncan Dodson
Braxton Foushee		Marty Roupe
Susan Poulton		Jacob Wiggins
Terri Buckner		
April Scales		
Galen Kirkpatrick		

8
9 Absent/Excused: Peretin,

10
11 Advisory boards with members present included the Planning Board, Transportation Advisory Board,
12 Appearance Commission, and the Stormwater Advisory Commission.

13
14 **I. WELCOME, ROLL CALL & INTRODUCTIONS**

15 Gaylord Miles opened the meeting at 7:35 PM.

16
17 **II. JOINT REVIEW ITEMS**

18 **A. Concept Plan Review for 603 Smith Level Road, SUP-B for Tourist Home**

19 Staff member Jacob Wiggins opened for Craig Boyles to present on the project. Boyles explained that
20 he plans to move out of the country for an extended period and would like to employ a third-party
21 property management company to maintain the property as a short-term rental. Boyles continued to say
22 that the house is set back from the road and is not especially visible to neighbors.

23
24 Planning board member Terri Buckner clarified that Chapel Hill and Orange County require the owner
25 of a short-term rental to live on site, but that is not an inherent requirement in the Carrboro Land Use
26 Ordinance.

27
28 **B. Conditional Rezoning Request for 400 North Greensboro Street for Residential Project**

29 Moon opened for Jim Spencer to present on the project. The proposal includes a three-story
30 development of seven dwelling units on 3.7 acres. The current zoning district is CT (Corporate Town,
31 4,000 square feet per dwelling unit) and the proposal is to rezone to B1G-CZ (General Business, 3,000
32 square feet per dwelling unit). A public hearing is scheduled for May 21st.

33
34 Questions asked by board members were related to parking and curb cuts, access to Shelton Station
35 parking lot, occupancy plans over time, native plants and landscaping, stormwater plans and
36 requirements, tree canopy, affordability, ownership models related to the co-op plans for the project,
37 and signalization potential on Parker Street.

1
2 **C. Review of Legislative Text Amendments to LUO, multiple topics are covered.**

3 Staff member Duncan Dodson gave an overview on the agenda item. The changes proposed are to
4 ensure clear alignment of the LUO with state enabling legislation and to clarify existing provisions to
5 improve the use of the LUO by new staff, new council members, new advisory board and commission
6 members, as well as applicants. The four topics are road buffers, fences, setback exceptions, and water
7 quality buffers.

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9 Advisory board members asked about the existing fence ordinance and the related building code
10 requirements, expanding the scope of the ordinance change to include fences outside the right-of-way,
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14 **III. APPROVAL OF MINUTES**

15 Sinclair motioned to approve the April 4, 2024, minutes with slight attendance corrections; Foushee
16 seconded the motion. The Planning Board April 4, 2024, meeting minutes were approved unanimously
17 at 9:04 PM.

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20 **IV. OTHER MATTERS**

21 **A. Concept Plan Review for 603 Smith Level Road, SUP-B for Tourist Home**
22 **Concept Plan Review for 603 Smith Level Road, SUP-B for Tourist Home**

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24 The Planning Board provides the following comments for consideration by the applicant in advance of the
25 Board of Adjustment meeting:

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 - Require permit to come for review on a recurring basis, such as annually.

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29 Motion was made by Buckner and seconded by Kirkpatrick that the Planning Board recommends that applicant
30 receive the comments and the Board of Adjustment receive the comments for consideration during the public
31 hearing.

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33 **VOTE:**

34 AYES: (7)

35 NOES: (0)

36 ABSTENTIONS: (0)

37 ABSENT/EXCUSED: (1) Peretin

38
39 **B. Conditional Rezoning Request for 400 North Greensboro Street for Residential Project**
40 **400 North Greensboro Street Conditional Rezoning to B-1G-CZ**

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42 By a unanimous show of hands, the Planning Board membership indicated that no members have any financial
43 interests, nor any close familial, business or other associational relationship to the landowner of the property
44 subject to a rezoning petition that would pose a conflict of interest.

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46 Motion was made by Buckner and seconded by Scales that the Planning Board recommends that the Town
47 Council approve the draft ordinance, with the revised condition four (4) as follows:

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 - The applicant shall provide a payment equivalent to the cost of one condominium in lieu of providing
50 affordable housing.

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VOTE:

AYES: (5) Buckner, Gaylord-Miles, Kilpatrick, Scales, Sinclair

NOES: (2) Foushee, Poulton

ABSTENTIONS: (0)

ABSENT/EXCUSED: (1) Peretin

Associated Findings

Motion was made by Sinclair and seconded by Foushee that the Planning Board of the Town of Carrboro finds the proposed map amendment, with the revised condition as noted above, is consistent with the Town of Carrboro 2022-2042 Comprehensive Plan, particularly:

- Affordable Housing Strategies to either increase the number of affordable homes for purchase by way of a payment in-lieu (1.1).
- Transportation & Mobility Strategies to encourage non-automobile use and expand opportunities for transportation options that do not rely on fossil fuel/SOVs under strategies 2.1 & 3.1.
- Green Stormwater Infrastructure, Water & Energy, Energy strategy 1.1, to reduce greenhouse gas emissions from motor vehicle use; and .
- Land Use Strategies – to develop fifteen-minute neighborhoods and make efficient use of land, 4.1.

The Planning Board furthermore finds that the above-described amendment is reasonable and in the public interest because it uses a mechanism that allows rezonings to occur under very specific conditions so as to ensure compatibility with surrounding and proposed uses.

VOTE:

AYES: (4) Buckner, Gaylord-Miles, Scales, Sinclair

NOES: (0)

ABSTENTIONS: (3) Kirkpatrick, Poulton, Foushee

ABSENT/EXCUSED: (1) Peretin

C. Review of Legislative Text Amendments to LUO, multiple topics are covered.

IV. ADJOURNMENT

Motion to adjourn was made by Poulton, Foushee seconded. The May 2, 2024, Planning Board meeting adjourned at 10:06 PM.

PLANNING BOARD

ITEM NO. _____

AGENDA ITEM ABSTRACT**MEETING DATE: May 2, 2024****TITLE: Land Use Ordinance Text Amendment Related to Water Quality Buffers, Road Buffers, Setback Exceptions, and Fences**

DEPARTMENT: Planning	PUBLIC HEARING: YES ___ NO_X_
ATTACHMENTS: A. Recommendation Template B. Draft LUO Ordinance C. Annotated Draft LUO Ordinance D. Map of Protective Road Buffers E. Staff Memo	FOR INFORMATION CONTACT: Patricia McGuire – 918-7327 Christina Moon – 918-7325 Duncan Dodson – 918-7340

PURPOSE

The purpose of this agenda item is to consider text amendments to the Land Use Ordinance that would ensure clear alignment with state enabling legislation and provide clarifications to improve usability of the ordinance. The Town Council has set a public hearing for June 7, 2024, and has requested advisory board review prior to the hearing.

INFORMATION

The changes incorporated into this text amendment serve two main purposes: to ensure clear alignment of language in the Land Use Ordinance with state enabling legislation (the Jordan Lake Rules and Chapter 160D), and to clarify certain provisions of the ordinance to improve its use by residents, boards, and staff. The recently adopted comprehensive plan, *Carrboro Connects*, directs the Town across several strategies to examine and update the LUO. In parallel to a larger rewrite of the ordinance, this amendment (Attachment B) advances goals laid out in the plan to improve the permit review process, and ensure the ordinance continues to align with existing state statutes.

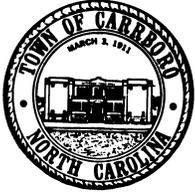
Staff identified these timely and appropriate changes from questions that came from applicants, advisory boards and commissions, and administrators of the Land Use Ordinance. To improve clarity, administration, and alignment of the Ordinance, staff selected four places where changes can be made: water quality buffers, road buffers, setback exceptions, and fences.

In addition, it should be noted that the draft ordinance, if approved, will not lessen Carrboro's water quality buffer provisions, change the use of road buffers, change the application process for setback exceptions, or change where fences are installed.

A public hearing has been set for June 4th. The Town Council must receive public comments before adopting amendments to the Land Use Ordinance. Orange County and Planning Board review is also needed. The Council has also referred the item to the Appearance Commission, the Transportation Advisory Board, the Environmental Advisory Board, the Economic Sustainability Commission, and the Affordable Housing Advisory Commission.

RECOMMENDATION

Staff recommends that advisory boards and commissions review the draft ordinance (*Attachment B*) and consider adopting a recommendation for inclusion in the public hearing materials for June 4th. A recommendation template has been provided for the boards to use (*Attachment A*).



TOWN OF CARRBORO

301 West Main Street, Carrboro, North Carolina 27510

RECOMMENDATION

THURSDAY, MAY 2, 2024

Land Use Ordinance Text Amendment Relating to Water Quality Buffers, Road Buffers, Fences, and Setback Exceptions

Motion was made by _____ and seconded by _____ that the _____ 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, nor any close familial, business or other associational relationship to the landowner of the property subject to a rezoning petition that would pose a conflict of interest.

Motion was made by _____ and seconded by _____ that the _____ of the Town of Carrboro finds the proposed text amendment _____ consistent with the Town of Carrboro 2022-2042 Comprehensive Plan, Climate Action & Environment, Transportation & Mobility, Green Stormwater Infrastructure, Water, & Energy, and Land Use strategies noted below:

- Climate Action & Environment Strategy 1.2a: Review and revise the provisions in the Land Use Ordinance related to stormwater and development to provide better protection to streams and riparian areas and to align in accordance with state enabling legislation.
- Transportation & Mobility Strategy 2.2 Continue to create safe streets and trail networks for pedestrians, bike riders, and transit riders due to the clarifications allowing sight triangles and bike and pedestrian facilities in protective road buffers.
- Green Stormwater Infrastructure, Water, & Energy: Water Strategy 2.1: Continue to implement watershed management and restoration projects ensuring alignment with state watershed protections.
- Land Use Strategy 3.1: Pursue development provisions that preserve and maintain natural areas by incorporating environmentally sensitive development and building practices.
- Land Use Strategy 5.2: Improve the development approval process to be more predictable and efficient while continuing to offer vibrant community participation.

Furthermore, the _____ of the Town of Carrboro finds the proposed text amendment, is reasonable and in the public interest because of the specific criteria required: public hearings for Land Use Ordinance changes that ensure alignment to state watershed regulations and enabling legislation, and that clarify existing provisions.

VOTE:

AYES: ()

ABSENT/EXCUSED: ()

NOES: ()

ABSTENTIONS: ()

(Chair)

(Date)

**AN ORDINANCE AMENDING THE TOWN OF CARRBORO LAND USE
ORDINANCE TO UPDATE AND CLARIFY WATER QUALITY BUFFER,
ROAD BUFFER, SETBACK VARIANCES, AND FENCE REQUIREMENTS**

****DRAFT 4-28-2024* ***

THE TOWN COUNCIL OF THE TOWN OF CARRBORO HEREBY ORDAINS:

Section 1. Section 15-92 (Variances), subsection (k) is amended to read as follows:

(k) With respect to a variance from any of the provisions of Part III (Water Quality Buffers) of Article XVI, the following procedure shall apply in addition to the standards set forth in Section 15-92(b):

(1) The Board may grant minor variances, which are activities that pertain to Zone Two as defined in 15a NCAC O2b.0267, as amended, and shall make a finding of fact as to whether there are practical difficulties or unnecessary hardships that prevent compliance with the riparian buffer protection requirements. A finding of practical difficulties or unnecessary hardships shall require that the following conditions are met:

(a) If the applicant complies with the provisions of this part, they can secure no reasonable return from, nor make reasonable use of, their property.

(a1) Merely proving that the variance would permit a greater profit from the property shall not be considered adequate justification for a variance. Moreover, the Board shall consider whether the variance is the minimum possible deviation from the terms of this part that shall make reasonable use of the property possible;

(b) The hardship results from application of this part to the property rather than from other factors such as deed restrictions or other hardship;

(c) The hardship is due to the physical nature of the applicant's property, such as its size, shape, or topography, such that compliance with provisions of this part would not allow reasonable use of the property;

(d) The applicant did not cause the hardship by knowingly or unknowingly violating this part;

(e) The applicant did not purchase the property after August 11, 2009, the effective date of this part, and then request a variance; and

(f) The hardship is rare or unique to the applicant's property.

(2) For any variance request, the local government shall make a finding of fact as to whether the variance is in harmony with the general purpose and intent of the State's riparian buffer protection requirements and preserves its spirit; and

(3) For any variance request, the Board shall make a finding of fact as to whether,

in granting the variance, the public safety and welfare have been assured, water quality has been protected, and substantial justice has been done.

(4) MINOR VARIANCES. A minor variance request pertains to activities that will impact only Zone Two of the riparian buffer. Minor variance requests shall be reviewed and approved based on the criteria in subsection (k)(1) through (k)(3) of this part by the Board pursuant to G.S. 160D-102(38). The Board may attach conditions to the variance approval that support the purpose, spirit and intent of the riparian buffer protection program.

(5) Request for appeals to decisions made by the Board shall be made on certiorari to the local Superior Court.

(6) MAJOR VARIANCES. A major variance request pertains to activities that will impact any portion of Zone One or any portion of both Zones One and Two of the riparian buffer. If the local government has determined that a major variance request meets the requirements in subsection (k)(1) through (k)(3) of this part, then it shall prepare a preliminary finding and submit it to the Board for approval. Within 90 days after receipt by the local government, the Board shall review preliminary findings on major variance requests and take one of the following actions: approve, approve with conditions and stipulations, or deny the request. Appeals from a Board decision on a major variance request are made on judicial review to Superior Court.

Section 2: Section 15-269.5 (d) (Table of Exempt and Allowable Activities in Water Quality Buffers) is amended to read as follows:

Use	Exempt *	Allowable *	Allowable with Mitigation*
Access trails: Pedestrian access trails leading to the surface water, docks, fishing piers, boat ramps and other water dependent activities: <ul style="list-style-type: none"> • Pedestrian access trails that are restricted to the minimum width practicable and do not exceed 4 feet in width of buffer disturbance, and provided that installation and use does not result in removal of trees as defined in Section 15-316 and no impervious surface is added to the buffer. • Pedestrian access trails that exceed 4 feet in width of buffer disturbance, the installation or use results in removal of trees as defined in this Ordinance or impervious surface is added to the riparian buffer 	X	X	
Airport facilities: <ul style="list-style-type: none"> • Airport facilities that impact equal to or less than 150 linear feet or one-third of an acre of riparian buffer • Airport facilities that impact greater than 150 linear feet or one-third of an acre of riparian buffer • Activities necessary to comply with FAA requirements (e.g. radar uses or landing strips)¹ 		X X	X
Archaeological activities	X		
Bridges		X	

* To qualify for the designation indicated in the column header, an activity must adhere to the limitations defined for it in a given listing as well as the requirements established in Section 15-269.4 (Diffuse Flow Requirement).

Use	Exempt *	Allowable *	Allowable with Mitigation*
Driveway crossings of streams and other surface waters subject to this Section: <ul style="list-style-type: none"> • Individual driveway crossings that disturb equal to or less than 25 linear feet or 2,500 square feet of buffer • Individual driveway crossings that disturb greater than 25 linear feet or 2,500 square feet of buffer • Multiple driveway crossings in any development that cumulatively disturbs equal to or less than 150 linear feet or one-third of an acre of buffer • Multiple driveway crossings in any development that cumulatively disturbs greater than 150 linear feet or one-third of an acre of buffer • Driveway impacts other than crossing of a stream or other surface waters subject to this Section 	X	X	X
Fences: <ul style="list-style-type: none"> • Fences provided that disturbance is minimized and installation does not result in removal of trees as defined in Section 15-316 • Fences provided that disturbance is minimized and installation results in removal of trees as defined in Section 15-316 	X	X	
Fertilizer application: One-time application to establish vegetation	X		
Forest harvesting – See Section 15-319.1			
Grading and revegetation in Zone 2 only provided that diffuse flow and the health of existing vegetation in Zone 1 is not compromised and disturbed areas are stabilized until they are revegetated		X	
Greenway / hiking trails ¹ designed, constructed and maintained to maximize nutrient removal and erosion protection, minimize adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practical.		X	
Maintenance access on modified natural streams: a grassed travel way on one side of the water body where less impacting alternatives are not practical. The width and specifications of the travel way shall be only that needed for equipment access and operation. The travel way shall be located to maximize stream shading.		X	

* To qualify for the designation indicated in the column header, an activity must adhere to the limitations defined for it in a given listing as well as the requirements established in Section 15-269.4 (Diffuse Flow Requirement).

Use	Exempt *	Allowable *	Allowable with Mitigation*
Mining activities: <ul style="list-style-type: none"> • Mining activities that are covered by the Mining Act provided that new buffers that meet the requirements of this section are established adjacent to the relocated channels • Mining activities that are not covered by the Mining Act OR where new buffers that meet the requirements of this section are not established adjacent to the relocated channels • Wastewater or mining dewatering wells with approved NPDES permit 	X	X	X
Playground equipment: <ul style="list-style-type: none"> • Playground equipment on single family lots provided that installation and use does not result in removal of vegetation • Playground equipment installed on lands other than single-family lots or that requires removal of vegetation 	X	X	
Ponds created by impounding streams and not used as stormwater BMPs: <ul style="list-style-type: none"> • New ponds in Zone 2 only provided that a riparian buffer meeting the requirements of Section 15-269.3 and 15-269.4 is established adjacent to the pond • All other ponds 		X	X
Preservation or maintenance of historic or cultural sites	X		
Protection of existing structures, facilities and stream banks when this requires additional disturbance of the riparian buffer or the stream channel		X	
Railroad crossings of streams and other surface waters subject to this Ordinance: <ul style="list-style-type: none"> • Railroad crossings that impact equal to or less than 40 linear feet of riparian buffer • Railroad crossings that impact greater than 40 linear feet but equal to or less than 150 linear feet or one-third of an acre of riparian buffer • Railroad crossings that impact greater than 150 linear feet or one-third of an acre of riparian buffer 	X	X	X
Railroad impacts other than crossings of streams and other surface waters subject to this Part.			X

* To qualify for the designation indicated in the column header, an activity must adhere to the limitations defined for it in a given listing as well as the requirements established in Section 15-269.4 (Diffuse Flow Requirement).

Use	Exempt *	Allowable *	Allowable with Mitigation*
Recreational and accessory structures in Zone 2: <ul style="list-style-type: none"> • Sheds and gazebos in Zone 2, provided they are not prohibited under local water supply ordinance: <ul style="list-style-type: none"> ○ Total footprint less than or equal to 150 square feet per lot. ○ Total footprint greater than 150 square feet per lot. • Wooden slatted decks and associated steps, provided the use meets the requirements of Section 15-269.3 and 15-269.4: <ul style="list-style-type: none"> ○ Deck at least eight feet in height and no vegetation removed from Zone 1. ○ Deck less than eight feet in height or vegetation removed from Zone 1. 		X	X
Removal of previous fill or debris provided that diffuse flow is maintained, a stabilizing ground cover sufficient to restrain erosion is established, and any woody vegetation removed is restored		X	
Road relocation: Relocation of existing private access roads associated with public road projects where necessary for public safety: <ul style="list-style-type: none"> • Less than or equal to 2,500 square feet of buffer impact • Greater than 2,500 square feet of buffer impact 		X	X
Scientific studies and stream gauging	X		
Shoreline stabilization, including armoring of stream banks with rip rap or retaining walls			X
Stormwater BMPs: <ul style="list-style-type: none"> • Wet detention, bioretention, and constructed wetlands in Zone 2 if diffuse flow of discharge is provided into Zone 1 • Constructed wetlands in Zone 1, if not closer than 30' to surface waters and diffuse flow is provided into the remainder of Zone 1. • Wet detention, bioretention, and constructed wetlands 30' or less from surface waters 		X	X
Temporary roads, provided that restoration activities, including re-establishment of pre-construction topographic and hydrologic conditions and replanting with comparable vegetation occur immediately after construction. Tree planting may occur during the dormant season; the restored buffer shall comply with Section 15-269.7(g) within five years: <ul style="list-style-type: none"> • Less than or equal to 2,500 square feet of buffer disturbance • Greater than 2,500 square feet of buffer disturbance • Associated with culvert installation or bridge construction or replacement. 	X	X	X

* To qualify for the designation indicated in the column header, an activity must adhere to the limitations defined for it in a given listing as well as the requirements established in Section 15-269.4 (Diffuse Flow Requirement).

Use	Exempt *	Allowable *	Allowable with Mitigation*
<p>Temporary sediment and erosion control devices provided that the disturbed area is restored to preconstruction topographic and hydrologic conditions and comparable vegetation is replanted immediately after construction is complete. Tree planting may occur during the dormant season; the restored buffer shall comply with Section 15-269.7(g) within five years:</p> <ul style="list-style-type: none"> • In Zone 2, provided that the vegetation in Zone 1 is not compromised, that discharge is released as diffuse flow in accordance with Section 15-269.5, and that ground cover is established within time frames required by the Sedimentation and Erosion Control Act • In Zones 1 and 2 to control impacts associated with uses approved by the Town or that have received a variance provided that sediment and erosion control for upland areas is addressed, to the maximum extent practical, outside the buffer. • In-stream temporary erosion and sediment control measures for work within a stream channel that is authorized under Sections 401 and 404 of the Federal Water Pollution Control Act. • In-stream temporary erosion and sediment control measures for work within a stream channel. 	<p style="text-align: center;">X</p> <p style="text-align: center;">X</p>	<p style="text-align: center;">X</p> <p style="text-align: center;">X</p>	
<p>Transportation (vehicular, bike) crossings of streams and other surface waters subject to this Section:</p> <ul style="list-style-type: none"> • Transportation crossings that impact equal to or less than 40 linear feet of riparian buffer • Transportation crossings that impact greater than 40 linear feet but equal to or less than 150 linear feet or one-third of an acre of riparian buffer <p>Transportation crossings that impact greater than 150 linear feet or one-third of an acre of riparian buffer</p>	<p style="text-align: center;">X</p>	<p style="text-align: center;">X</p>	<p style="text-align: center;">X</p>
<p>Transportation impacts other than crossings of streams and other surface waters subject to this Section</p>			<p style="text-align: center;">X</p>
<p>Utility, electric, aerial, perpendicular crossings^{2,3,4}:</p> <ul style="list-style-type: none"> • Disturb equal to or less than 100 linear feet of buffer • Disturb greater than 100 linear feet of buffer 	<p style="text-align: center;">X</p>	<p style="text-align: center;">X</p>	
<p>Utility, electric, aerial, other than perpendicular crossings³:</p> <ul style="list-style-type: none"> • Impacts greater than 50 feet from surface waters • Impacts within 30-50 feet of surface waters • Impacts within 30 feet of surface waters^{2,4,5} 	<p style="text-align: center;">X</p>	<p style="text-align: center;">X</p>	<p style="text-align: center;">X</p>
<p>Utility, electric, underground, perpendicular crossings^{3,4,6}:</p> <ul style="list-style-type: none"> • Disturb less than or equal to 40 linear feet of buffer • Disturb greater than 40 linear feet of buffer 	<p style="text-align: center;">X</p>	<p style="text-align: center;">X</p>	

* To qualify for the designation indicated in the column header, an activity must adhere to the limitations defined for it in a given listing as well as the requirements established in Section 15-269.4 (Diffuse Flow Requirement).

Use	Exempt *	Allowable *	Allowable with Mitigation*
Utility, electric, underground, other than perpendicular crossings ^{3,6} : <ul style="list-style-type: none"> • Impacts greater than 50 feet from surface waters • Impacts within 30-50 feet of surface waters • Impacts within 30 feet of surface waters⁵ 	X	X	X
Utility, non-electric, perpendicular crossings ^{3,4,6,7} : <ul style="list-style-type: none"> • Disturb equal to or less than 40 linear feet of buffer with a maintenance corridor equal to or less than 10 feet in width • Disturb equal to or less than 40 linear feet of buffer with a maintenance corridor greater than 10 feet in width • Disturb greater than 40 linear feet but equal to or less than 150 linear feet of buffer with a maintenance corridor equal to or less than 10 feet in width • Disturb greater than 40 linear feet but equal to or less than 150 linear feet of buffer with a maintenance corridor greater than 10 feet in width • Disturb greater than 150 linear feet of buffer 	X	X X	X X
Utility, non-electric, other than perpendicular crossings ^{3,6} : <ul style="list-style-type: none"> • Impacts greater than 50 feet from surface waters • Impacts within 30-50 feet of surface waters • Impacts within 30 feet of surface waters^{5,8} 		X	X
Vegetation management: <ul style="list-style-type: none"> • Emergency fire control measures provided that topography is restored • Mowing or harvesting of plant products in Zone 2 only • Planting vegetation to enhance the riparian buffer • Pruning forest vegetation provided that the health and function of the forest vegetation is not compromised • Removal of individual trees which are dead, diseased, or damaged, are in danger of causing damage to dwellings, other structures or human life, or are imminently endangering the stability of the streambank. • Removal of poison ivy • Removal of invasive exotic vegetation as defined in Smith, Cherri L., 1998 Exotic Plant Guidelines. DENR, Division of Parks and Recreation. Raleigh, N.C. Guideline # 30, or a more recent version or alternative reference approved by the NC EMC. 	X X X X X X		
Vehicle access roads and boat ramps leading to the surface water, docks, fishing piers, and other water dependent activities, but not crossing the surface water and having a minimum practicable width of not more than 10 feet.		X	
Water dependent structures where installation and use result in disturbance to riparian buffers.		X	

* To qualify for the designation indicated in the column header, an activity must adhere to the limitations defined for it in a given listing as well as the requirements established in Section 15-269.4 (Diffuse Flow Requirement).

Use	Exempt *	Allowable *	Allowable with Mitigation*
Water supply reservoirs: <ul style="list-style-type: none"> • New reservoirs where a riparian buffer that meets the requirements of Section 15-269.3 is established adjacent to the reservoir • New reservoirs where a riparian buffer that meets the requirements of Section 15-269.3 is not established adjacent to the reservoir 		X	X
Water wells <ul style="list-style-type: none"> • Single family residential water wells • All other water wells 	X	X	
Wetland, stream and buffer restoration that results in impacts to the riparian buffers: <ul style="list-style-type: none"> • Wetland, stream and buffer restoration that requires DWQ approval for the use of a 401 Water Quality Certification • Wetland, stream and buffer restoration that does not require DWQ approval for the use of a 401 Water Quality Certification 	X	X	
Wildlife passage structures		X	

* To qualify for the designation indicated in the column header, an activity must adhere to the limitations defined for it in a given listing as well as the requirements established in Section 15-269.4 (Diffuse Flow Requirement).

¹ To the extent practicable the greenway easements shall be located a minimum of 10 feet from the top of bank; surfaces shall be a minimum of 15 feet from the top of bank.

² Provided that within 30 feet of surface waters, all of the following BMPs for overhead utility lines are used. If all of these BMPs are not used, then the overhead utility lines shall require a no practical alternative evaluation by the Administrator as defined in Section 15-269.6.

- A zone at least 10 feet wide immediately adjacent to the water body shall be managed such that only vegetation that poses a hazard or has the potential to grow tall enough to interfere with the line is removed.
- Woody vegetation shall be cleared by hand. No land grubbing or grading is allowed.
- Vegetative root systems shall be left intact to maintain the integrity of the soil. Stumps shall remain where trees are cut.
- Riprap shall not be used unless it is necessary to stabilize a tower..
- No fertilizer shall be used other than a one-time application to re-establish vegetation.
- Construction activities shall minimize the removal of woody vegetation, the extent of the disturbed area, and the time in which areas remain in a disturbed state.
- Active measures shall be taken after construction and during routine maintenance to ensure diffuse flow of stormwater through the buffer.
- In wetlands, mats shall be utilized to minimize soil disturbance.

³ Perpendicular crossings are those that intersect the surface water at an angle between 75 degrees and 105 degrees.

⁴ Provided that poles or aerial infrastructure shall not be installed within 10 feet of a water body unless the Administrator completes a no practical alternative evaluation as defined in Section 15-269.6.

⁵ Provided that:

- No heavy equipment shall be used within 30 feet of surface waters.
- A tree protection plan shall be developed and approved by Administrator that will protect the buffer to the maximum extent practicable

- Vegetation in undisturbed portions of the buffer is not compromised.
- Felled trees are removed by chain.
- No permanent felling of trees occurs in protected buffers or streams.
- Stumps are removed only by grinding.
- At the completion of the project the disturbed area is stabilized with native vegetation.
- Zones one and two meet the requirements of Section 15-269.3.

⁶ Provided that:

- A tree protection plan shall be developed and approved by Administrator that will protect the buffer to the maximum extent practicable.
- Trees shall be felled so as not to damage trees not intended for removal or stream banks.
- Construction activities shall minimize the removal of woody vegetation, the extent of the disturbed area, and the time in which areas remain in a disturbed state.
- Stump grinding is allowable only for stumps more than 30 feet from surface waters.
- Within 30 feet of surface water, all of the following BMPs for underground utility lines shall be used. If all of these BMPs are not used, then the underground utility line shall require a no practical alternative evaluation by the Administrator, as defined in Section 15-269.6.
 - Woody vegetation shall be cleared by hand. No land grubbing or grading is allowed.
 - Vegetative root systems shall be left intact to maintain the integrity of the soil. Stumps shall remain, except in the trench where trees are cut.
 - Underground cables shall be installed by vibratory plow or trenching.
 - The trench shall be backfilled with the excavated soil material immediately following cable installation.
 - No fertilizer shall be used other than a one-time application to re-establish vegetation.
 - Construction activities shall minimize the removal of woody vegetation, the extent of the disturbed area, and the time in which areas remain in a disturbed state.
 - Measures shall be taken upon completion of construction and during routine maintenance to ensure diffuse flow of stormwater through the buffer.
 - In wetlands, mats shall be utilized to minimize soil disturbance.

⁷ All sewer crossings shall be protected from damage and risk of future leakage to the maximum extent practicable using ductile iron and other appropriate construction materials and practices.

⁸ The width of the corridor that is maintained to exclude woody vegetation will not exceed 20 feet in width except to accommodate vehicle turnaround, preparedness for emergency situations, and state and federal regulatory standards.

Section 3. Subdivision (b)(1)(b) of Section 15-198 (Open Space) is amended to read as follows:

- b. Is not devoted to use as a roadway, parking area, or sidewalk, unless a publicly accessible sidewalk or related shared-use facility is located within a protective roadway buffer as defined by Section 15-312.

Section 4. Subdivision (b)(4)(g) of Section 15-198 (Open Space) is amended to read as follows:

- g. Road buffers as required by Section 15-312 of the Chapter, except for those portions of the buffers that must be included in road or utility crossings, sight triangles and pedestrian and bicycle improvements.

Section 5. Section 15-312 (Protective Buffer Along Major Roads). Is amended to read as follows:

Notwithstanding the provisions of Section 15-308, but subject to the remaining provisions of this section, an undisturbed protective buffer shall be maintained along Old N.C. 86, Dairyland Road, Union Grove Church Road, Homestead Road, Eubanks Road and Smith Level Road south of Ray Road that will help preserve the scenic views and elements of this area. With respect to each property that fronts one of the named streets, any development other than use classification 13.200, Fire Station, that occurs after the effective date of this section shall provide an undisturbed buffer (except for necessary crossings and encroachments as described in Section 15-198(b)(4)(g)) that is a minimum of 50 feet in width and on average is 100 feet in width along such frontage. If the buffer area does not provide the equivalent of a Type 'A' screen, the developer shall provide a Type 'A' screen on the development's side of the buffer (one hundred (100) feet from the right-of-way)

Section 6. Section 15-92.1 (Special Exception Permits) is amended by replacing the term "special exception permit" in all instances with the term "setback exception."

Section 7. Section 15-92.1(c)(2) is amended to read as follows:

- (2) Issuance of the permit will not adversely affect the value of adjoining or neighboring properties.

Section 8. Section 15-184(3)(b) is amended with the addition of a definition of "substantially opaque" so that the subdivision now reads as follows:

- (b). Fences, walls or berms running along right-of-way or lot boundaries adjacent to public street rights of way if such fences, walls or berms exceed three feet in height and are substantially opaque except that fences, walls or berms shall not be regarded as "buildings" within the meaning of this subdivision if they are located along the rear lot line of lots that have street frontage along both the front and rear of such lots. For the purpose of this section, any portion of a fence higher than three feet located horizontally along or perpendicular to a right-of-way that does not meet the applicable setback requirement must be at least 50 percent open/revealed to 50 percent closed/opaque. A zoning permit for use 35.00 (Fences) is only required when fences are located in the right-of-way setback.

Section 9. Section 15-147 (Use of the Designations A,B,Z in Table of Permissible Uses) is amended by the addition of a new subsection (w) that reads as follows:

- (w) Notwithstanding the foregoing, a zoning permit is only required for use 35.00 (Fences) as defined in Subdivision 15-184(3)(b), when fences are located in the right-of-way setback.

Section 10. Section 15-146 (Table of Permissible Uses) is amended by the addition of a new use classification, 35.00 (Fence), with a “Z” entered in each column indicating that a zoning permit is required for the installation of a fence in each zoning district.

Section 11. All provisions of any Town Ordinance in conflict with this Ordinance are repealed.

Section 12. This Ordinance shall become effective upon adoption.

DRAFT

ARTICLE XVI
FLOOD DAMAGE PREVENTION, STORMWATER MANAGEMENT, AND
WATERSHED PROTECTION

PART III. WATER QUALITY BUFFERS

Section 15-269.5 Exempt and Allowable Activities.

(a) The table set forth in subsection (d) below sets out the activities and their designation under this part as exempt, allowable, or allowable with mitigation, except as provided for in 15-269.2. All activities not designated as exempt, allowable, or allowable with mitigation are prohibited within the buffer unless a variance is granted pursuant to Section 15-269.8.

(b) Activities designated in the table below as exempt, allowable, and allowable with mitigation shall be subject to the following requirements. All activities shall be designed, constructed and maintained to minimize soil and vegetation disturbance and to provide the maximum water quality protection practicable, including construction, monitoring, and maintenance activities. Activities designated in the table as allowable and allowable with mitigation require written authorization from the Town.

- (1) Exempt. Activities designated as exempt are allowed within the buffer. In addition, exempt uses shall meet the requirements listed in the table and the accompanying notes for the specific use.
- (2) Allowable. Activities designated as allowable are permissible within the buffer provided that there are no practical alternatives to the requested use as determined in accordance with Section 15-269.6.
- (1) Allowable With Mitigation. Activities designated as allowable with mitigation are permissible within the buffer provided that there are no practical alternatives to the requested use as determined in accordance with Section 15-269.6, and an appropriate mitigation strategy has been approved pursuant to Section 15-269.7.

(c) For public utilities as defined in this Article, the activities and their designation as set forth in the table in subsection (d) apply to expansions and extensions. The requirements do not apply to routine or emergency maintenance and repairs.

(d) Table of Exempt and Allowable Activities in Water Quality Buffers (AMENDED 3/4/14)

Activity	Exempt *	Allowable*	Allowable with Mitigation*
<p>Access trails: Pedestrian access trails leading to the surface water, docks, fishing piers, boat ramps and other water dependent activities:</p> <ul style="list-style-type: none"> • Pedestrian access trails that are restricted to the minimum width practicable and do not exceed 4 feet in width of buffer disturbance, and provided that installation and use does not result in removal of trees as defined in Section 15-316 and no impervious surface is added to the buffer. • Pedestrian access trails that exceed 4 feet in width of buffer disturbance, the installation or use results in removal of trees as defined in this Ordinance or impervious surface is added to the riparian buffer 	X	X	
<p>Airport facilities:</p> <ul style="list-style-type: none"> • Airport facilities that impact equal to or less than 150 linear feet or one-third of an acre of riparian buffer • Airport facilities that impact greater than 150 linear feet or one-third of an acre of riparian buffer • Activities necessary to comply with FAA requirements (e.g. radar uses or landing strips)⁵ 		X	X
Archaeological activities	X		
Bridges		X	
Canoe Access provided that installation and use does not result in removal of trees as defined in Section 15-316 and no impervious surface is added to the buffer.	X		
<p>Dam maintenance activities:</p> <ul style="list-style-type: none"> • Dam maintenance activities that do not cause additional buffer disturbance beyond the footprint of the existing dam or those covered under the U.S. Army Corps of Engineers Nationwide Permit No. 3 • Dam maintenance activities that do cause additional buffer disturbance beyond the footprint of the existing dam or those not covered under the U.S. Army Corps of Engineers Nationwide Permit No. 3 	X	X	

* To qualify for the designation indicated in the column header, an activity must adhere to the limitations defined for it in a given listing as well as the requirements established in Section 15-269.4 (Diffuse Flow Requirement).

Activity	Exempt *	Allowable*	Allowable with Mitigation*
Driveway crossings of streams and other surface waters subject to this Section: <ul style="list-style-type: none"> • Individual driveway crossings that disturb equal to or less than 25 linear feet or 2,500 square feet of buffer • Individual driveway crossings that disturb greater than 25 linear feet or 2,500 square feet of buffer • Multiple driveway crossings in any development that cumulatively disturbs equal to or less than 150 linear feet or one-third of an acre of buffer • Multiple driveway crossings in any development that cumulatively disturbs greater than 150 linear feet or one-third of an acre of buffer • Driveway impacts other than crossing of a stream or other surface waters subject to this Section 	X	X X	X X
Fences: <ul style="list-style-type: none"> • Fences provided that disturbance is minimized and installation does not result in removal of trees as defined in Section 15-316 • Fences provided that disturbance is minimized and installation results in removal of trees as defined in Section 15-316 	X	X	
Fertilizer application: One-time application to establish vegetation	X		
Forest harvesting – See Section 15-319.1			
Grading and revegetation in Zone 2 only provided that diffuse flow and the health of existing vegetation in Zone 1 is not compromised and disturbed areas are stabilized until they are revegetated		X	
Greenway / hiking trails ¹ designed, constructed and maintained to maximize nutrient removal and erosion protection, minimize adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practical.		X	
Maintenance access on modified natural streams: a grassed travel way on one side of the water body where less impacting alternatives are not practical. The width and specifications of the travel way shall be only that needed for equipment access and operation. The travel way shall be located to maximize stream shading.		X	

* To qualify for the designation indicated in the column header, an activity must adhere to the limitations defined for it in a given listing as well as the requirements established in Section 15-269.4 (Diffuse Flow Requirement).

Activity	Exempt *	Allowable*	Allowable with Mitigation*
Mining activities: <ul style="list-style-type: none"> • Mining activities that are covered by the Mining Act provided that new buffers that meet the requirements of this section are established adjacent to the relocated channels • Mining activities that are not covered by the Mining Act OR where new buffers that meet the requirements of this section are not established adjacent to the relocated channels • Wastewater or mining dewatering wells with approved NPDES permit 	X	X	X
Playground equipment: <ul style="list-style-type: none"> • Playground equipment on single family lots provided that installation and use does not result in removal of vegetation • Playground equipment installed on lands other than single-family lots or that requires removal of vegetation 	X	X	
Ponds created by impounding streams and not used as stormwater BMPs: <ul style="list-style-type: none"> • New ponds in Zone 2 only provided that a riparian buffer meeting the requirements of Section 15-269.3 and 15-269.4 is established adjacent to the pond • All other ponds 		X	X
Preservation or maintenance of historic or cultural sites	X		
Protection of existing structures, facilities and stream banks when this requires additional disturbance of the riparian buffer or the stream channel		X	

* To qualify for the designation indicated in the column header, an activity must adhere to the limitations defined for it in a given listing as well as the requirements established in Section 15-269.4 (Diffuse Flow Requirement).

Railroad crossings of streams and other surface waters subject to this Ordinance: <ul style="list-style-type: none"> • Railroad crossings that impact equal to or less than 40 linear feet of riparian buffer • Railroad crossings that impact greater than 40 linear feet but equal to or less than 150 linear feet or one-third of an acre of riparian buffer • Railroad crossings that impact greater than 150 linear feet or one-third of an acre of riparian buffer 	X	X	X
Railroad impacts other than crossings of streams and other surface waters subject to this Part.			X

Activity	Exempt *	Allowable*	Allowable with Mitigation*
<p>Temporary roads, provided that restoration activities, including re-establishment of pre-construction topographic and hydrologic conditions and replanting with comparable vegetation occur immediately after construction. Tree planting may occur during the dormant season; the restored buffer shall comply with Section 15-269.7(g) within five years:</p> <ul style="list-style-type: none"> • Less than or equal to 2,500 square feet of buffer disturbance • Greater than 2,500 square feet of buffer disturbance • Associated with culvert installation or bridge construction or replacement. 	X	X X	

* To qualify for the designation indicated in the column header, an activity must adhere to the limitations defined for it in a given listing as well as the requirements established in Section 15-269.4 (Diffuse Flow Requirement).

<p>Temporary sediment and erosion control devices provided that the disturbed area is restored to preconstruction topographic and hydrologic conditions and comparable vegetation is replanted immediately after construction is complete. Tree planting may occur during the dormant season; the restored buffer shall comply with Section 15-269.7(g) within five years:</p> <ul style="list-style-type: none"> • In Zone 2, provided that the vegetation in Zone 1 is not compromised, that discharge is released as diffuse flow in accordance with Section 15-269.5, and that ground cover is established within time frames required by the Sedimentation and Erosion Control Act • In Zones 1 and 2 to control impacts associated with uses approved by the Town or that have received a variance provided that sediment and erosion control for upland areas is addressed, to the maximum extent practical, outside the buffer. • In-stream temporary erosion and sediment control measures for work within a stream channel that is authorized under Sections 401 and 404 of the Federal Water Pollution Control Act. • In-stream temporary erosion and sediment control measures for work within a stream channel. 	X X	X X	
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Activity	Exempt *	Allowable*	Allowable with Mitigation*
Transportation (vehicular, bike) crossings of streams and other surface waters subject to this Section: <ul style="list-style-type: none"> • Transportation crossings that impact equal to or less than 40 linear feet of riparian buffer • Transportation crossings that impact greater than 40 linear feet but equal to or less than 150 linear feet or one-third of an acre of riparian buffer • Transportation crossings that impact greater than 150 linear feet or one-third of an acre of riparian buffer 	X	X	X
Transportation impacts other than crossings of streams and other surface waters subject to this Section			X
* To qualify for the designation indicated in the column header, an activity must adhere to the limitations defined for it in a given listing as well as the requirements established in Section 15-269.4 (Diffuse Flow Requirement).			
Utility, electric, aerial, perpendicular crossings ^{2,3,4} : <ul style="list-style-type: none"> • Disturb equal to or less than 100 linear feet of buffer • Disturb greater than 100 linear feet of buffer 	X	X	
Utility, electric, aerial, other than perpendicular crossings ³ : <ul style="list-style-type: none"> • Impacts greater than 50 feet from surface waters • Impacts within 30-50 feet of surface waters • Impacts within 30 feet of surface waters^{2,4,5} 	X	X	X
Utility, electric, underground, perpendicular crossings ^{3,4,6} : <ul style="list-style-type: none"> • Disturb less than or equal to 40 linear feet of buffer • Disturb greater than 40 linear feet of buffer 	X	X	
Utility, electric, underground, other than perpendicular crossings ^{3,6} : <ul style="list-style-type: none"> • Impacts greater than 50 feet from surface waters • Impacts within 30-50 feet of surface waters • Impacts within 30 feet of surface waters⁵ 	X	X	X

Activity	Exempt *	Allowable*	Allowable with Mitigation*
Utility, non-electric, perpendicular crossings ^{3,4,6,7} : <ul style="list-style-type: none"> • Disturb equal to or less than 40 linear feet of buffer with a maintenance corridor equal to or less than 10 feet in width • Disturb equal to or less than 40 linear feet of buffer with a maintenance corridor greater than 10 feet in width • Disturb greater than 40 linear feet but equal to or less than 150 linear feet of buffer with a maintenance corridor equal to or less than 10 feet in width • Disturb greater than 40 linear feet but equal to or less than 150 linear feet of buffer with a maintenance corridor greater than 10 feet in width • Disturb greater than 150 linear feet of buffer 	X	X X	 X X
Utility, non-electric, other than perpendicular crossings ^{3,6} : <ul style="list-style-type: none"> • Impacts greater than 50 feet from surface waters • Impacts within 30-50 feet of surface waters • Impacts within 30 feet of surface waters^{5,8} 	X	X	X

* To qualify for the designation indicated in the column header, an activity must adhere to the limitations defined for it in a given listing as well as the requirements established in Section 15-269.4 (Diffuse Flow Requirement).

Vegetation management: <ul style="list-style-type: none"> • Emergency fire control measures provided that topography is restored • Mowing or harvesting of plant products in Zone 2 only • Planting vegetation to enhance the riparian buffer • Pruning forest vegetation provided that the health and function of the forest vegetation is not compromised • Removal of individual trees which are dead, diseased, or damaged, are in danger of causing damage to dwellings, other structures or human life, or are imminently endangering the stability of the streambank. • Removal of poison ivy • Removal of invasive exotic vegetation as defined in Smith, Cherri L., 1998 Exotic Plant Guidelines. DENR, Division of Parks and Recreation. Raleigh, N.C. Guideline # 30, or a more recent version or alternative reference approved by the NC EMC. 	X X X X X X		
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Activity	Exempt*	Allowable*	Allowable with Mitigation*
Vehicle access roads and boat ramps leading to the surface water, docks, fishing piers, and other water dependent activities, but not crossing the surface water and having a minimum practicable width of not more than 10 feet.		X	
Water dependent structures where installation and use result in disturbance to riparian buffers.		X	
Water supply reservoirs: <ul style="list-style-type: none"> • New reservoirs where a riparian buffer that meets the requirements of Section 15-269.3 is established adjacent to the reservoir • New reservoirs where a riparian buffer that meets the requirements of Section 15-269.3 is not established adjacent to the reservoir 		X	X
Water wells <ul style="list-style-type: none"> • Single family residential water wells • All other water wells 	X	X	
* To qualify for the designation indicated in the column header, an activity must adhere to the limitations defined for it in a given listing as well as the requirements established in Section 15-269.4 (Diffuse Flow Requirement).			
Wetland, stream and buffer restoration that results in impacts to the riparian buffers: <ul style="list-style-type: none"> • Wetland, stream and buffer restoration that requires DWQ approval for the use of a 401 Water Quality Certification • Wetland, stream and buffer restoration that does not require DWQ approval for the use of a 401 Water Quality Certification 	X	X	
Wildlife passage structures		X	
* To qualify for the designation indicated in the column header, an activity must adhere to the limitations defined for it in a given listing as well as the requirements established in Section 15-269.4 (Diffuse Flow Requirement).			

¹ To the extent practicable the greenway easements shall be located a minimum of 10 feet from the top of bank; surfaces shall be a minimum of 15 feet from the top of bank.

² Provided that within 30 feet of surface waters, all of the following BMPs for overhead utility lines are used. If all of these BMPs are not used, then the overhead utility lines shall require a no practical alternative evaluation by the Administrator as defined in Section 15-269.6.

- A zone at least 10 feet wide immediately adjacent to the water body shall be managed such that only vegetation that poses a hazard or has the potential to grow tall enough to interfere with the line is removed.
- Woody vegetation shall be cleared by hand. No land grubbing or grading is allowed.
- Vegetative root systems shall be left intact to maintain the integrity of the soil. Stumps shall remain where trees are cut.
- Riprap shall not be used unless it is necessary to stabilize a tower..
- No fertilizer shall be used other than a one-time application to re-establish vegetation.
- Construction activities shall minimize the removal of woody vegetation, the extent of the disturbed area, and the time in which areas remain in a disturbed state.
- Active measures shall be taken after construction and during routine maintenance to ensure diffuse flow of stormwater through the buffer.
- In wetlands, mats shall be utilized to minimize soil disturbance.

³ Perpendicular crossings are those that intersect the surface water at an angle between 75 degrees and 105 degrees.

⁴ Provided that poles or aerial infrastructure shall not be installed within 10 feet of a water body unless the Administrator completes a no practical alternative evaluation as defined in Section 15-269.6.

⁵ Provided that:

- No heavy equipment shall be used within 30 feet of surface waters.
- A tree protection plan shall be developed and approved by Administrator that will protect the buffer to the maximum extent practicable
- Vegetation in undisturbed portions of the buffer is not compromised.
- Felled trees are removed by chain.
- No permanent felling of trees occurs in protected buffers or streams.
- Stumps are removed only by grinding.
- At the completion of the project the disturbed area is stabilized with native vegetation.
- Zones one and two meet the requirements of Section 15-269.3.

⁶ Provided that:

- A tree protection plan shall be developed and approved by Administrator that will protect the buffer to the maximum extent practicable.
- Trees shall be felled so as not to damage trees not intended for removal or stream banks.
- Construction activities shall minimize the removal of woody vegetation, the extent of the disturbed area, and the time in which areas remain in a disturbed state.
- Stump grinding is allowable only for stumps more than 30 feet from surface waters.
- Within 30 feet of surface water, all of the following BMPs for underground utility lines shall be used. If all of these BMPs are not used, then the underground utility line shall require a no practical alternative evaluation by the Administrator, as defined in Section 15-269.6.
 - Woody vegetation shall be cleared by hand. No land grubbing or grading is allowed.
 - Vegetative root systems shall be left intact to maintain the integrity of the soil. Stumps shall remain, except in the trench where trees are cut.
 - Underground cables shall be installed by vibratory plow or trenching.
 - The trench shall be backfilled with the excavated soil material immediately following cable installation.
 - No fertilizer shall be used other than a one-time application to re-establish vegetation.
 - Construction activities shall minimize the removal of woody vegetation, the extent of the disturbed area, and the time in which areas remain in a disturbed state.
 - Measures shall be taken upon completion of construction and during routine maintenance to ensure diffuse flow of stormwater through the buffer.
 - In wetlands, mats shall be utilized to minimize soil disturbance.

⁷ All sewer crossings shall be protected from damage and risk of future leakage to the maximum extent practicable using ductile iron and other appropriate construction materials and practices.

⁸ The width of the corridor that is maintained to exclude woody vegetation will not exceed 20 feet in width except to accommodate vehicle turnaround, preparedness for emergency situations, and state and federal regulatory standards.

Activity	Exempt	Allowable	Allowable with Mitigation
Drainage, Stormwater, Erosion Control, and other Water-based activities			

Activity	Exempt	Allowable	Allowable with Mitigation
<ul style="list-style-type: none"> • Dam maintenance activities that do not cause additional buffer disturbance beyond the footprint of the existing dam or those covered under the U.S. Army Corps of Engineers Nationwide Permit No. 3 • Dam maintenance activities that do cause additional buffer disturbance beyond the footprint of the existing dam or those not covered under the U.S. Army Corps of Engineers Nationwide Permit No. 3 	X	X	
<p>Drainage ditches, roadside ditches and stormwater conveyances through buffers:</p> <ul style="list-style-type: none"> • New stormwater flows to existing drainage ditches, roadside ditches, and stormwater conveyances provided that flows do not alter or result in the need to alter the conveyance and are managed to minimize the sediment, nutrients and other pollution that convey to surface waters – Realignment of roadside drainage ditches retaining the design dimensions provided that no additional travel lanes are added and the minimum required roadway typical section is used based on traffic and safety considerations. • New or altered drainage ditches, roadside ditches and stormwater outfalls provided that a stormwater management facility is installed to control nutrients and attenuate flow before the conveyance discharges through the riparian buffer. • New drainage ditches, roadside ditches and stormwater conveyances applicable to linear projects that do not provide a stormwater management facility due to topographic constraints provided that other practicable BMPs have been employed. 	X	X	X X
<ul style="list-style-type: none"> • Ponds created by impounding streams and not used as stormwater BMPs: • New ponds in Zone 2 only provided that a riparian buffer meeting the requirements of Section 15-269.3 and 15-269.4 is established adjacent to the pond • All other new ponds 		X	X

Activity	Exempt	Allowable	Allowable with Mitigation
<ul style="list-style-type: none"> • Drainage of a pond in a natural drainage way provided that a new riparian buffer that meets the requirements of this section is established adjacent to the new channel. [Ponds that are not in a natural drainage way are not subject to the buffer requirements of this part.] AMENDED 2/21/12) 	X		
Scientific studies and stream gauging	X		
<p>Stormwater BMPs:</p> <ul style="list-style-type: none"> • Constructed wetlands in Zone 1, if not closer than 30' to surface waters and diffuse flow is provided into the remainder of Zone 1. • Wet detention, bioretention, and constructed wetlands in Zone 2 if diffuse flow of discharge is provided into Zone 1 		X	
-See Wetland, stream and buffer restoration			
Shoreline stabilization, including armoring of stream banks with rip rap or retaining walls			X
<p>Temporary sediment and erosion control devices provided that the disturbed area is restored to preconstruction topographic and hydrologic conditions and comparable vegetation is replanted immediately after construction is complete. Tree planting may occur during the dormant season; the restored buffer shall comply with Section 15-269.7(g) within five years:</p> <ul style="list-style-type: none"> • In Zone 2, provided that the vegetation in Zone 1 is not compromised, that discharge is released as diffuse flow in accordance with Section 15-269.5, and that ground cover is established within time frames required by the Sedimentation and Erosion Control Act In Zones 1 and 2 to control impacts associated with uses approved by the Town or that have received a variance provided that sediment and erosion control for upland areas is addressed, to the maximum extent practical, outside the buffer. • In-stream temporary erosion and sediment control measures for work within a stream channel that is authorized under Sections 401 and 404 of the Federal Water Pollution Control Act. • In-stream temporary erosion and sediment control measures for work within a stream channel. 	X	X	

Activity	Exempt	Allowable	Allowable with Mitigation
Water dependent structures where installation and use result in disturbance to riparian buffers.		X	
Water wells <ul style="list-style-type: none"> • Single family residential water wells • All other water wells 	X	X	
Wetland, stream and buffer restoration that results in impacts to the riparian buffers: <ul style="list-style-type: none"> • Wetland, stream and buffer restoration that requires DWQ approval for the use of a 401 Water Quality Certification • Wetland, stream and buffer restoration that does not require DWQ approval for the use of a 401 Water Quality Certification 	X	X	
Miscellaneous			
Archaeological activities	X		
Fences: <ul style="list-style-type: none"> • Fences provided that disturbance is minimized and installation does not result in removal of trees as defined in Section 15-316 • Fences provided that disturbance is minimized and installation results in removal of trees as defined in Section 15-316 	X	X	
Grading and revegetation in Zone 2 only provided that diffuse flow and the health of existing vegetation in Zone 1 is not compromised and disturbed areas are stabilized until they are revegetated		X	
Maintenance access on modified natural streams: a grassed travel way on one side of the water body where less impacting alternatives are not practical. The width and specifications of the travel way shall be only that needed for equipment access and operation. The travel way shall be located to maximize stream shading.		X	

Activity	Exempt	Allowable	Allowable with Mitigation
<p>Mining activities:</p> <ul style="list-style-type: none"> • Mining activities that are covered by the Mining Act provided that new buffers that meet the requirements of this section are established adjacent to the relocated channels Mining activities that are not covered by the Mining Act OR where new buffers that meet the requirements of this section are not established adjacent to the relocated channels • Wastewater or mining dewatering wells with approved NPDES permit 		X	X
Preservation or maintenance of historic or cultural sites	X		
Protection of existing structures, facilities and stream banks when this requires additional disturbance of the riparian buffer or the stream channel		X	
Removal of previous fill or debris provided that diffuse flow is maintained, a stabilizing ground cover sufficient to restrain erosion is established, and any woody vegetation removed is restored		X	
Wildlife passage structures		X	
Recreation			
<p>Access trails: Pedestrian access trails leading to the surface water, docks, fishing piers, boat ramps and other water dependent activities:</p> <ul style="list-style-type: none"> • Pedestrian access trails that are restricted to the minimum width practicable and do not exceed 4 feet in width of buffer disturbance, and provided that installation and use does not result in removal of trees as defined in Section 15-316 and no impervious surface is added to the buffer. • Pedestrian access trails that exceed 4 feet in width of buffer disturbance, the installation or use results in removal of trees as defined in this Section or impervious surface is added to the buffer. 	X	X	
Canoe Access provided that installation and use does not result in removal of trees as defined in Section 15-316 and no impervious surface is added to the buffer.	X		

Activity	Exempt	Allowable	Allowable with Mitigation
Greenway / hiking trails ¹ designed, constructed and maintained to maximize nutrient removal and erosion protection, minimize adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practical		X	
Playground equipment: <ul style="list-style-type: none"> • Playground equipment on single family lots provided that installation and use does not result in removal of vegetation • Playground equipment installed on lands other than single family lots or that requires removal of vegetation 	X	X	
Transportation			
Bridges		X	
Driveway crossings of streams and other surface waters subject to this Section: <ul style="list-style-type: none"> • Individual driveway crossings that disturb equal to or less than 25 linear feet or 2,500 square feet of buffer • Individual driveway crossings that disturb greater than 25 linear feet or 2,500 square feet of buffer • Multiple driveway crossings in any development that cumulatively disturbs equal to or less than 150 linear feet or one third of an acre of buffer • Multiple driveway crossings in any development that cumulatively disturbs greater than 150 linear feet or one third of an acre of buffer • Driveway impacts other than crossing of a stream or other surface waters subject to this Section 	X	X X	 X X
Railroad impacts other than crossings of streams and other surface waters subject to this Part.			X
Railroad crossings of streams and other surface water drainage features subject to this Part: <ul style="list-style-type: none"> • Railroad crossings that impact equal to or less than 40 linear feet of riparian buffer • Railroad crossings that impact greater than 40 linear feet but equal to or less than 150 linear feet or one third of an acre of riparian buffer • Railroad crossings that impact greater than 150 linear feet or one third of an acre of riparian buffer 	X	X	 X

¹ To the extent practicable, greenway easements shall be located a minimum of 10 feet from the top of bank; surfaces shall be a minimum of 15 feet from the top of bank

Activity	Exempt	Allowable	Allowable with Mitigation
<p>Road relocation: Relocation of existing private access roads associated with public road projects where necessary for public safety:</p> <ul style="list-style-type: none"> • Less than or equal to 2,500 square feet of buffer impact • Greater than 2,500 square feet of buffer impact 		X	X
<p>Temporary roads, provided that restoration activities, including re-establishment of pre-construction topographic and hydrologic conditions and replanting with comparable vegetation occur immediately after construction. Tree planting may occur during the dormant season; the restored buffer shall comply with Section 15-269.7(g) within five years:</p> <ul style="list-style-type: none"> • Less than or equal to 2,500 square feet of buffer disturbance • Greater than 2,500 square feet of buffer disturbance • Associated with culvert installation of bridge construction or replacement 	X	X X	
<p>Transportation (vehicular, bike) crossings of streams and other surface waters subject to this Section:</p> <ul style="list-style-type: none"> • Transportation crossings that impact equal to or less than 40 linear feet of riparian buffer • Transportation crossings that impact greater than 40 linear feet but equal to or less than 150 linear feet or one third of an acre of riparian buffer • Transportation crossings that impact greater than 150 linear feet or one third of an acre of riparian buffer 	X	X	X
<p>Transportation impacts other than crossings of streams and other surface waters subject to this Section</p>			X
<p>Vehicle access roads and boat ramps leading to the surface water, docks, fishing piers, and other water dependent activities, but not crossing the surface water and having a minimum practicable width of not more than 10 feet.</p>		X	
Utilities			

Activity	Exempt	Allowable	Allowable with Mitigation
Electric utility, aerial, perpendicular crossings ^{2,3,4} : <ul style="list-style-type: none"> • Disturb equal to or less than 100 linear feet of buffer • Disturb greater than 100 linear feet of buffer 	X	X	
Electric utility, aerial, other than perpendicular crossings ³ : <ul style="list-style-type: none"> • Impacts greater than 50 feet from surface waters • Impacts within 30-50 feet of surface waters • Impacts within 30 feet of surface waters^{2,4,5} 	X	X	X
Electric utility, underground, perpendicular crossings ^{3,4,6} : <ul style="list-style-type: none"> • Disturb less than or equal to 40 linear feet of buffer • Disturb greater than 40 linear feet of buffer 	X	X	

² Provided that within 30 feet of surface waters, all of the following BMPs for overhead utility lines are used. If all of these BMPs are not used, then the overhead utility lines shall require a no practical alternative evaluation by the Administrator as defined in Section 15-269.6.

- A zone at least 10 feet wide immediately adjacent to the water body shall be managed such that only vegetation that poses a hazard or has the potential to grow tall enough to interfere with the line is removed.
- Woody vegetation shall be cleared by hand. No land grubbing or grading is allowed.
- Vegetative root systems shall be left intact to maintain the integrity of the soil. Stumps shall remain where trees are cut.
- Riprap shall not be used unless it is necessary to stabilize a tower.
- No fertilizer shall be used other than a one-time application to re-establish vegetation.
- Construction activities shall minimize the removal of woody vegetation, the extent of the disturbed area, and the time in which areas remain in a disturbed state.
- Active measures shall be taken after construction and during routine maintenance to ensure diffuse flow of stormwater through the buffer.
- In wetlands, mats shall be utilized to minimize soil disturbance.

³ Perpendicular crossings are those that intersect the surface water at an angle between 75 degrees and 105 degrees.

⁴ Provided that poles or aerial infrastructure shall not be installed within 10 feet of a water body unless the Administrator completes a no practical alternative evaluation as defined in Section 15-269.6

⁵ Provided that:

- No heavy equipment shall be used within 30 feet of surface waters.
- A tree protection plan shall be developed and approved by Administrator that will protect the buffer to the maximum extent practicable.
- Trees shall be: 1) felled so as not to damage trees not intended for removal or stream banks; and 2) removed by chain.
- No permanent felling of trees occurs in protected buffers or streams.
- Stumps shall be removed only by grinding.
- Construction activities shall minimize the removal of woody vegetation, the extent of the disturbed area, and the time in which areas remain in a disturbed state.
- At the completion of the project the disturbed area shall be stabilized with native vegetation.
- The condition and use of the area within 50 feet of surface waters shall be consistent with Sections 15-269.3 and 15-269.4.

⁶ • A tree protection plan shall be developed and approved by Administrator that will protect the buffer to the maximum extent practicable.

- Trees shall be felled so as not to damage trees not intended for removal or stream banks.
- Construction activities shall minimize the removal of woody vegetation, the extent of the disturbed area, and the time in which areas remain in a disturbed state.
- Stump grinding is allowable only for stumps more than 30 feet from surface waters.

Activity	Exempt	Allowable	Allowable with Mitigation
Electric utility, underground, other than perpendicular crossings ^{3,6} : <ul style="list-style-type: none"> • Impacts greater than 50 feet from surface waters • Impacts within 30-50 feet of surface waters • Impacts within 30 feet of surface waters⁵ 	X	X	X
Non electric utility, perpendicular crossings ^{3,4,6,7} : <ul style="list-style-type: none"> • Disturb equal to or less than 40 linear feet of buffer with a maintenance corridor equal to or less than 10 feet in width • Disturb equal to or less than 40 linear feet of buffer with a maintenance corridor greater than 10 feet in width • Disturb greater than 40 linear feet but equal to or less than 150 linear feet of buffer with a maintenance corridor equal to or less than 10 feet in width • Disturb greater than 40 linear feet but equal to or less than 150 linear feet of buffer with a maintenance corridor greater than 10 feet in width • Disturb greater than 150 linear feet of buffer 	X	X X	X X
Non electric utility, other than perpendicular crossings ^{3,6} : <ul style="list-style-type: none"> • Impacts greater than 50 feet from surface waters • Impacts within 30-50 feet of surface waters • Impacts within 30 feet of surface waters^{5,8} 	X	X	X
Vegetation Management			
Forest harvesting— See Section 15-319.1			
Fertilizer application: One-time fertilizer application to establish vegetation	X		

• Within 30 feet of surface water, all of the following BMPs for underground utility lines shall be used. If all of these BMPs are not used, then the underground utility line shall require a no practical alternative evaluation by the Administrator, as defined in Section 15-269.6.

• Trees shall be removed by chain. Woody vegetation shall be cleared by hand. No land grubbing or grading is allowed.

• Vegetative root systems shall be left intact to maintain the integrity of the soil. Stumps shall remain, except in the trench created for the line installation.

• Underground cables shall be installed by vibratory plow or trenching.

• The trench shall be backfilled with the excavated soil material immediately following cable installation.

• No fertilizer shall be used other than a one-time application to re-establish vegetation.

• In wetlands, mats shall be utilized to minimize soil disturbance.

• At the completion of the project the disturbed area shall be stabilized with native vegetation.

• The condition and use of the area within 50 feet of surface waters shall be consistent with Sections 15-269.3 and 15-269.4

⁷ All sewer crossings shall be protected from damage and risk of future leakage to the maximum extent practicable using ductile iron and other appropriate construction materials and practices.

⁸ The width of the corridor that is maintained to exclude woody vegetation will not exceed 20 feet in width except to accommodate vehicle turnaround, preparedness for emergency situations, and state and federal regulatory standards.

Activity	Exempt	Allowable	Allowable with Mitigation
<p>Vegetation management:</p> <ul style="list-style-type: none"> • Emergency fire control measures provided that topography is restored • Mowing and harvesting of plant products in Zone 2 only • Planting vegetation to enhance the riparian buffer • Pruning forest vegetation provided that the health and function of the forest vegetation is not compromised • Removal of individual trees which are dead, diseased, or damaged, are in danger of causing damage to dwellings, other structures or human life, or are imminently endangering the stability of the streambank • Removal of poison ivy • Removal of invasive exotic vegetation as defined in Smith, Cheri L., 1998 <i>Exotic Plant Guidelines</i>. DENR, Division of Parks and Recreation. Raleigh, N.C. Guideline # 30, or a more recent version or alternative reference approved by the NC EMC. 	<p>X</p> <p>X</p> <p>X</p> <p>X</p> <p>X</p> <p>X</p> <p>X</p>		

ARTICLE V
APPEALS, VARIANCES, SPECIAL SETBACK EXCEPTIONS, INTERPRETATIONS,
AND DETERMINATIONS (AMENDED 6/22/21)

Section 15-92 Variances. (AMENDED 11/10/81; 4/21/87; 12/05/89; 4/23/96; 10/24/06; 6/26/12; 10/21/14; REPEALED & AMENDED 3/24/09; REWRITTEN 10/26/10)

...

(k) ~~If the board votes to grant a major~~ **With respect to a variance from any of the provisions of Part III (Water Quality Buffers) of Article XVI, the following procedure shall apply in addition to the standards set forth in Section 15-92(b):**

- (1) The Board may grant minor variances, which are activities that pertain to Zone Two as defined in 15a NCAC O2b.0267, as amended, and shall make a finding of fact as to whether there are practical difficulties or unnecessary hardships that prevent compliance with the riparian buffer protection requirements. A finding of practical difficulties or unnecessary hardships shall require that the following conditions are met:
 - (a) If the applicant complies with the provisions of this part, they can secure no reasonable return from, nor make reasonable use of, their property.
 - i. Merely proving that the variance would permit a greater profit from the property shall not be considered adequate justification for a variance. Moreover, the Board shall consider whether the variance is the minimum possible deviation from the terms of this part that shall make reasonable use of the property possible;
 - (b) The hardship results from application of this part to the property rather than from other factors such as deed restrictions or other hardship;
 - (c) The hardship is due to the physical nature of the applicant's property, such as its size, shape, or topography, such that compliance with provisions of this part would not allow reasonable use of the property;
 - (d) The applicant did not cause the hardship by knowingly or unknowingly violating this part;
 - (e) The applicant did not purchase the property after August 11, 2009, the effective date of this part, and then request a variance; and
 - (f) The hardship is rare or unique to the applicant's property.
- (2) For any variance request, the local government shall make a finding of fact

as to whether the variance is in harmony with the general purpose and intent of the State's riparian buffer protection requirements and preserves its spirit; and

- (3) For any variance request, the Board shall make a finding of fact as to whether, in granting the variance, the public safety and welfare have been assured, water quality has been protected, and substantial justice has been done.
- (4) **MINOR VARIANCES.** A minor variance request pertains to activities that will impact only Zone Two of the riparian buffer. Minor variance requests shall be reviewed and approved based on the criteria in subsection (k)(1) through (k)(3) of this part by the Board pursuant to G.S. 160D-102(38). The Board may attach conditions to the variance approval that support the purpose, spirit and intent of the riparian buffer protection program.
- (5) Request for appeals to decisions made by the Board shall be made on certiorari to the local Superior Court.
- (6) **MAJOR VARIANCES.** A major variance request pertains to activities that will impact any portion of Zone One or any portion of both Zones One and Two of the riparian buffer. If the local government has determined that a major variance request meets the requirements in subsection (k)(1) through (k)(3) of this part, then it shall prepare a preliminary finding and submit it to the Board for approval. Within 90 days after receipt by the local government, the Board shall review preliminary findings on major variance requests and take one of the following actions: approve, approve with conditions and stipulations, or deny the request. Appeals from a Board decision on a major variance request are made on judicial review to Superior Court.

~~the administrator shall forthwith prepare and send to the Environmental Management Commission a record of the proceedings before the board. The variance shall not be issued until it is approved by the EMC. For purposes of this subsection, a major variance is one that pertains to prohibited activities that will impact that portion of Zone One of the riparian buffers that lies within 30 feet of the surface waters subject to buffer requirements of the Jordan Reservoir.~~

Section 15-92.1 Special **Setback Exception Permits. (AMENDED 6/21/94; 6/4/24)**

[PLEASE REFERENCE "APPENDIX H"]

(a) An application for a **special setback** exception permit shall be submitted to the board of adjustment by filing a copy of the application with the administrator in the planning department.

(b) All of the provisions of this article applicable to the processing of variance applications shall also apply to **special setback** exception permit requests, except the provisions of Subsections 15-92(b) and 15-96(b) and (c).

(c) The board of adjustment may issue a ~~special setback~~ exception permit for the purposes and under the circumstances set forth in the remaining subsections of this section if it concludes, in addition to any other findings required below, that:

- (1) Issuance of the permit will not create a threat to the public health or safety; and
- (2) Issuance of the permit will not adversely affect the value of adjoining or neighboring properties. ~~If the applicant presents a petition, signed by the owners of all properties entitled to receive notice of the hearing on the application pursuant to Section 15-102(2), and stating that such property owners believe their property values will not be adversely affected by the proposed use, this shall be sufficient evidence from which the board may (but shall not be required to) make the required finding. The board may also make the required finding based on other competent evidence.~~

(d) The board of adjustment may issue a ~~special setback~~ exception permit under this section to allow a reduction of up to 50% in the required distances that buildings must be set back from lot boundary lines under Subsection 15-184(a)(4)

...

(e) The board of adjustment may issue a ~~special setback~~ exception permit to authorize a structure to encroach upon a setback required under Section 15-184 if it finds that

...

**Section 15-96 Board Action on Appeals, Variances, and ~~Special Setback~~ Exceptions.
(AMENDED 4/27/82; 6/21/94; 10/21/14)**

(d) Before granting a ~~special setback~~ exception permit, the board shall vote affirmatively on each of the findings required under section 15-92.1. A motion to deny a ~~special setback~~ exception may be made on the basis that any one or more of the findings required by section 15-92.1 are not satisfied or that the application is incomplete. Insofar as practicable, such a motion shall include a statement of the specific reasons or findings of fact that support it.

ARTICLE XIII RECREATIONAL FACILITIES AND OPEN SPACE

**Section 15-198 Open Space. (AMENDED 4/24/84; 3/26/85; 12/10/85; 11/11/86;
REWRITTEN 6/27/95; 6/20/06; AMENDED 3/24/09; 3/23/10)**

(a) The Council finds that when land is developed for residential purposes, the public health, safety, and welfare are best served when substantial portions of the tracts so developed remain as common open space. The preservation of such open space areas serves the following important objectives, to the benefit of the residents of such developments as well as the general public:

- (1) Preservation of open vistas, providing relief from an urban landscape;
- (2) Preservation of environmentally sensitive lands;
- (3) Preservation of habitat for wildlife;
- (4) Preservation of historically or archaeologically significant areas;
- (5) Provision of areas for passive recreation, such as walking or jogging.

(b) For purposes of this section:

- (1) Open space refers to an area that:
 - a. Is not encumbered with any substantial structure;
 - b. Is not devoted to use as a roadway, parking area, or sidewalk, **unless a publicly accessible sidewalk or related shared-use facility is located within a protective roadway buffer as defined by Section 15-312.**
 - c. Is not part of any privately owned lot that is used or intended for use for residential purposes;
 - d. Is legally and practicably accessible to the general public or to the residents of the development where the open space is located.
- (2) Narrow strips of common area that separate lots within a development from each other, from streets, or from adjoining tracts shall generally not be regarded as open space within the meaning of this section unless such areas:
 - a. Are at least 50 feet in width and capable of functioning as a substantial visual buffer; or

- b. Are configured and/or improved (e.g. through the installation of trails) in such a way as to be conducive to actual use for passive recreational purposes (i.e. walking or jogging) by residents of the development where located.
- (3) The following areas shall be regarded as open space if such areas satisfy at least the criteria set forth in Subdivision (1) a, b, and c of subsection (b) of this section:
- a. Utility easements located outside of street rights of way;
 - b. Cemeteries located on a tract prior to its development.
 - c. Areas used for the growing of crops, such as hay, corn, or vegetables, if and to the extent that such uses occur within an area that is subject to the control of a homeowners association and such uses are approved by the homeowners association. **(AMENDED 5/25/99)**
- (4) The term “primary conservation areas” shall mean: **(AMENDED 5/25/99; 6/20/99)**
- a. Areas containing slopes greater than 25%
 - b. Hardwood areas as designated in the Geographic Information System (GIS) of the Town of Carrboro. **(AMENDED 3/24/09)**
 - c. Wetlands as defined pursuant to Section 404 of the Clean Water Act
 - d. Floodplains
 - e. Water quality buffers on perennial and intermittent streams. **(AMENDED 3/24/09)**
 - f. Lakes and ponds;
 - g. Road buffers as required by Section 15-312 of this Chapter, except for those portions of the buffers that must be included in road or utility crossings, **sight triangles, and pedestrian and bicycle improvements.**

ARTICLE XIX SCREENING AND TREES

PART I. SCREENING

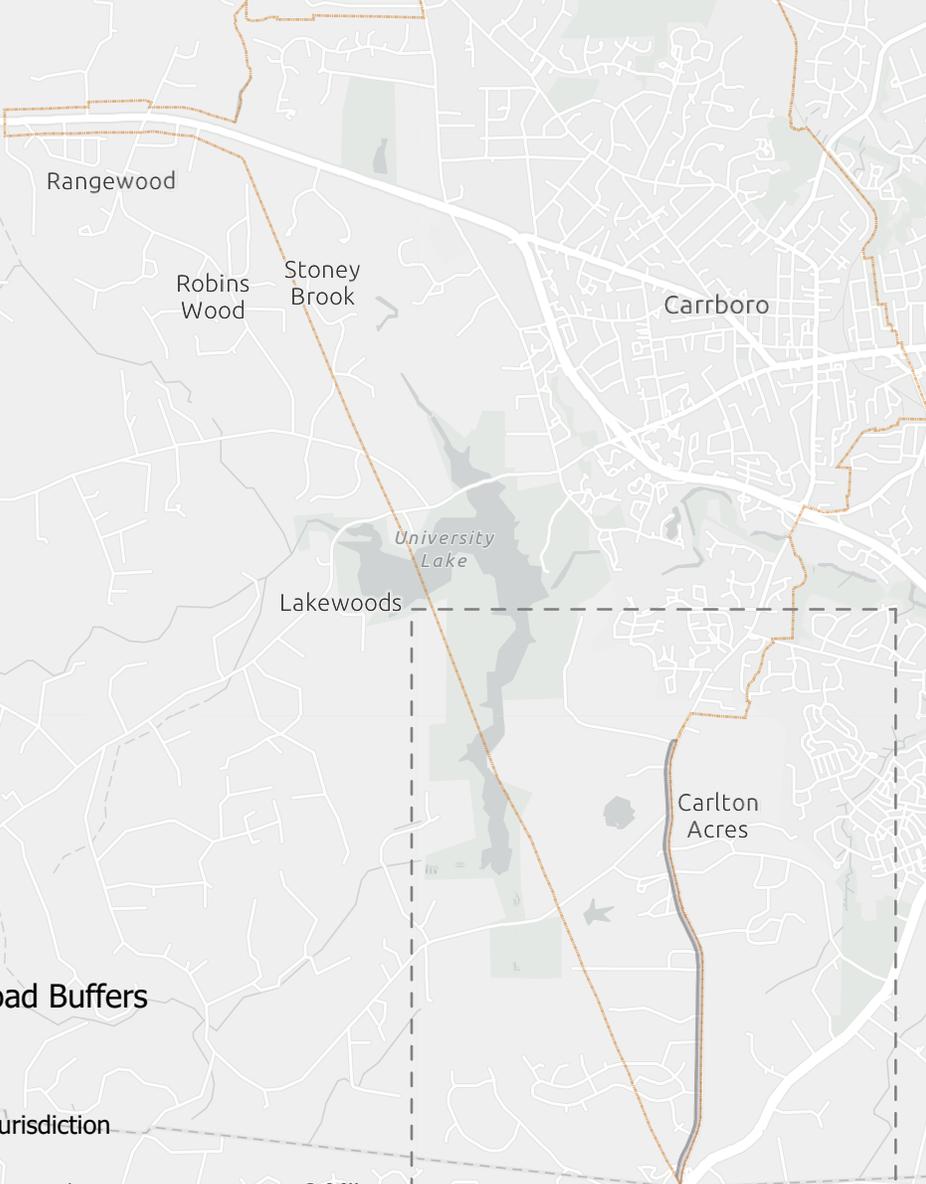
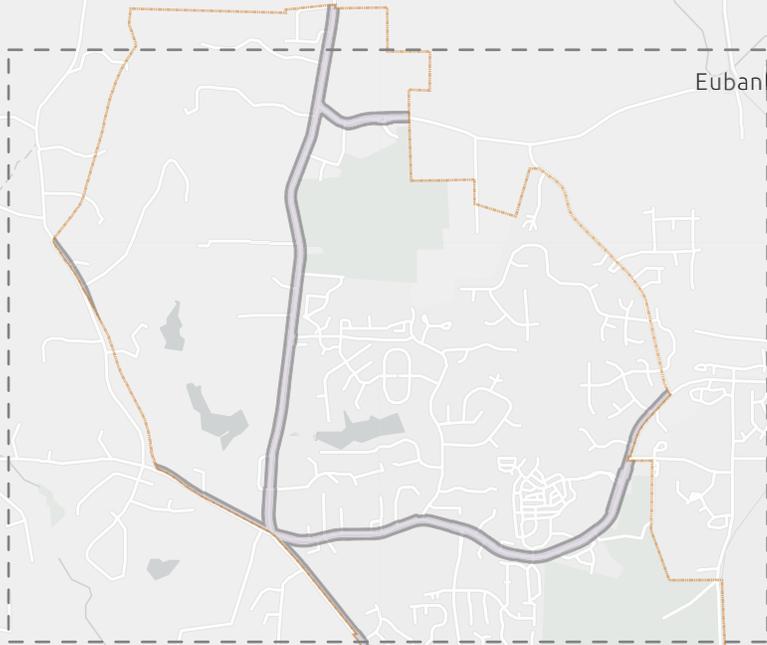
Section 15-312 Protective Buffer Along Major Roads. (AMENDED 5/25/99; 10/23/07)

Notwithstanding the provisions of Section 15-308, but subject to the remaining provisions of this section, an undisturbed protective buffer shall be maintained along Old N.C. 86, Dairyland Road, Union Grove Church Road, Homestead Road, Eubanks Road and Smith Level Road south of Ray Road that will help preserve the scenic views and elements of this area. With respect to each property that fronts one of the named streets, any development other than use classification 13.200, Fire Station, that occurs after the effective date of this section shall provide an undisturbed buffer (except for necessary crossings and encroachments as described in Section 15-198(b)(4)(g)) that is a minimum of 50 feet in width and on average is 100 feet in width along such frontage. If the buffer area does not provide the equivalent of a Type 'A' screen, the developer shall provide a Type 'A' screen on the development's side of the buffer (one hundred (100) feet from the right-of-way)

ARTICLE XII DENSITY AND DIMENSIONAL REGULATIONS

Section 15-184 Building Setback Requirements

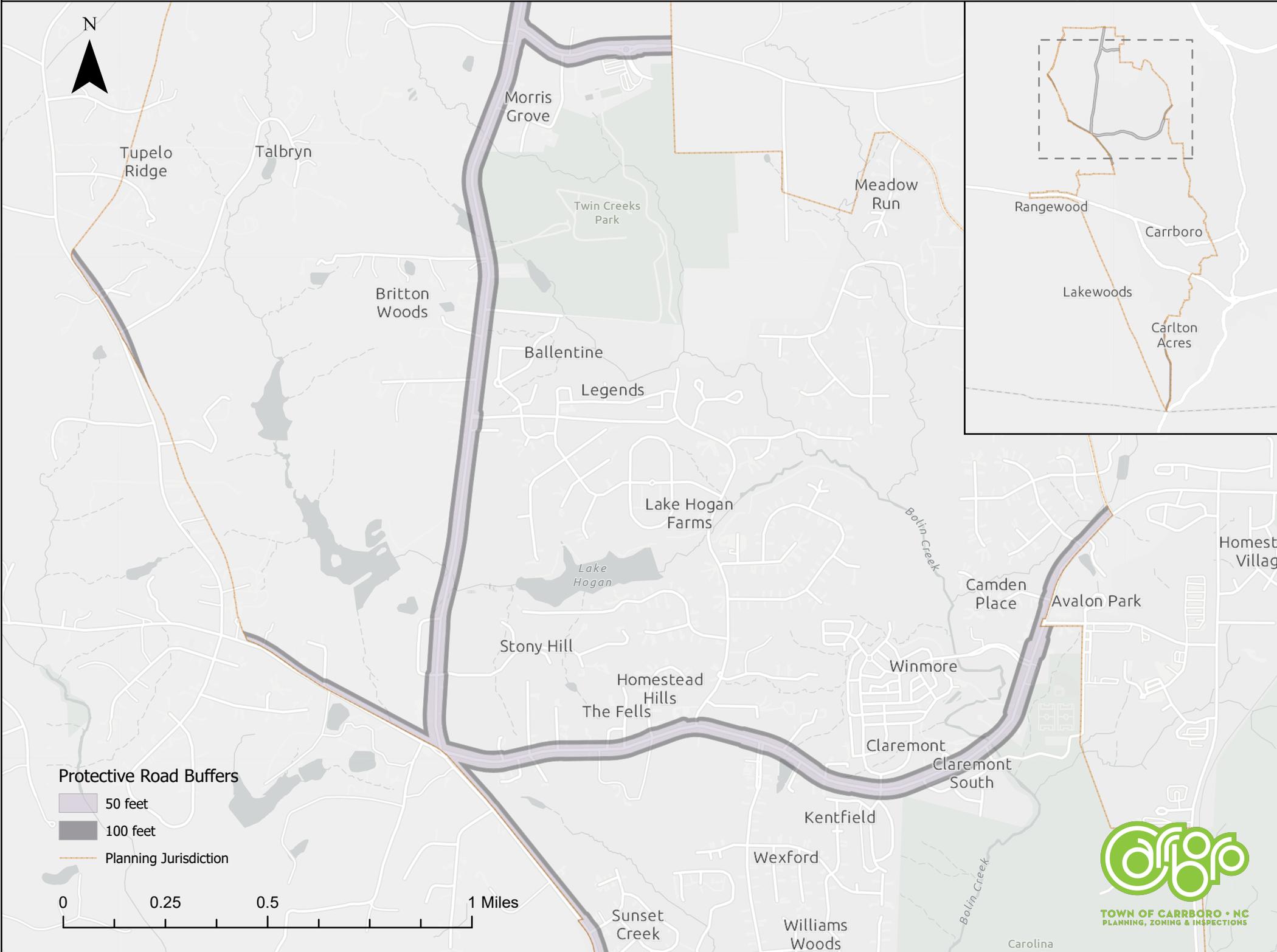
- (a) Subject to Section 15-187 (Architecturally Integrated Subdivisions) and the other provisions of this section, no portion of any building or any freestanding sign may be located on any lot closer to any lot line or to the street right-of-way line or centerline than is authorized in the table set forth below: **(AMENDED 1/22/85)**
- (1) If the street right-of-way line is readily determinable (by reference to a recorded map, set irons, or other means), the setback shall be measured from such right-of-way line. If the right-of-way line is not so determinable, the setback shall be measured from the street centerline.
 - (2) As used in this section, the term “lot boundary line” refers to lot boundaries other than those that abut streets.
 - (3) As used in this section, the term “building” includes any substantial structure, which, by nature of its size, scale, dimensions, bulk, or use tends to constitute a visual obstruction or generate activity similar to that usually associated with a building. Without limiting the generality of the foregoing, the following structures shall be deemed to fall within this description:
 - a. Gas pumps and overhead canopies or roofs.
 - b. Fences, walls or berms running along **right-of-way or** lot boundaries adjacent to public street rights of way if such fences, walls or berms exceed three feet in height and are substantially opaque except that fences, walls or berms shall not be regarded as “buildings” within the meaning of this subdivision if they are located along the rear lot line of lots that have street frontage along both the front and rear of such lots. **For the purpose of this section, any portion of a fence higher than three feet located horizontally along or perpendicular to a right-of-way that does not meet the applicable setback requirement must be at least 50 percent open/revealed to 50 percent closed/opaque. A zoning permit for use 35.00 (Fences) is only required when fences are located in the right-of-way setback (AMENDED 5/19/98)**



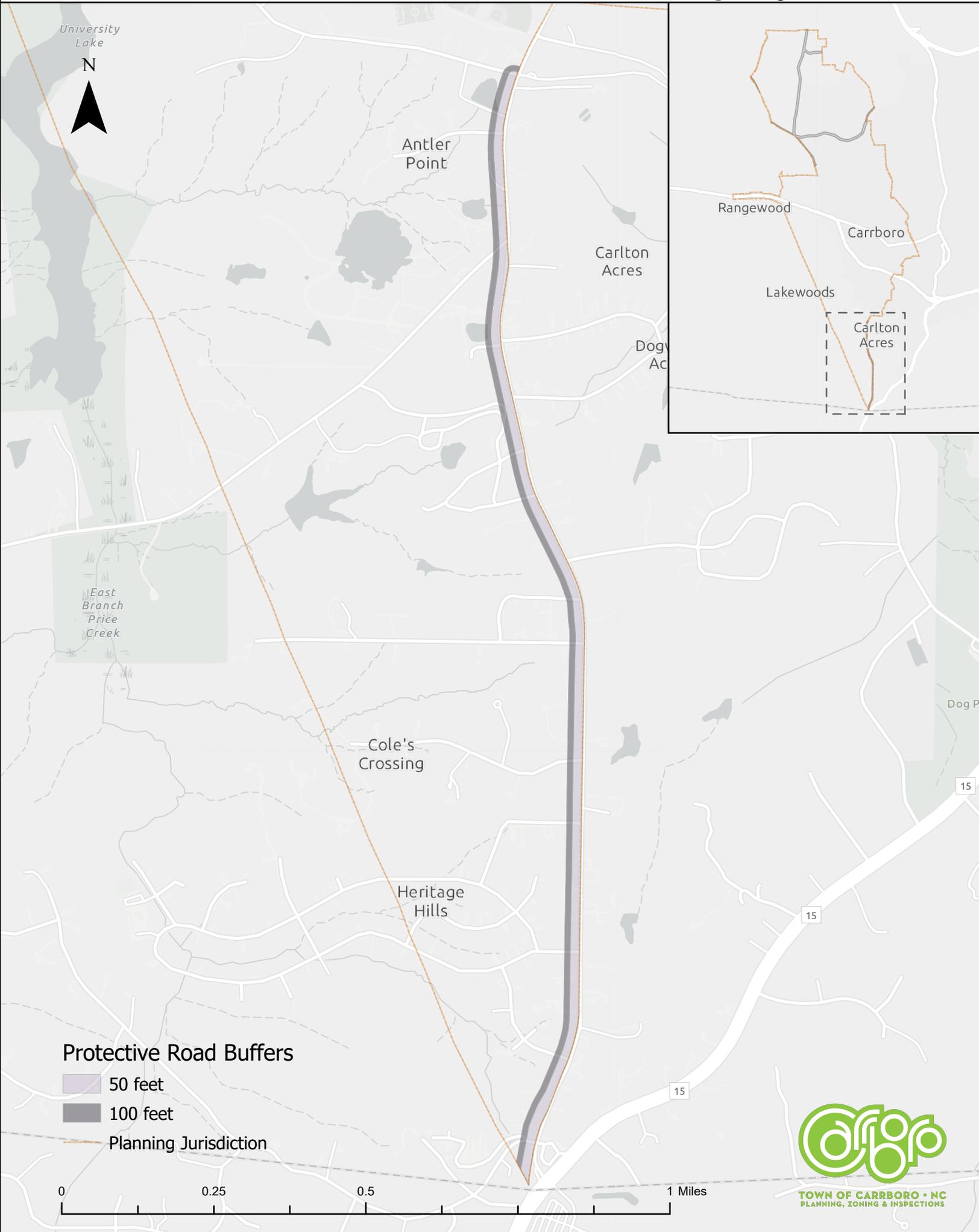
Protective Road Buffers

-  50 feet
-  100 feet
-  Planning Jurisdiction





TOWN OF CARRBORO • NC
PLANNING, ZONING & INSPECTIONS



Protective Road Buffers

-  50 feet
-  100 feet
-  Planning Jurisdiction

0 0.25 0.5 1 Miles





TOWN OF CARRBORO

NORTH CAROLINA

TRANSMITTAL

PLANNING DEPARTMENT

DELIVERED VIA: HAND MAIL FAX EMAIL

To: Advisory Boards

From: Duncan Dodson, Planner

Date: April 28, 2024

Subject: Proposed Land Use Ordinance Text Amendment Relating to Water Quality Buffers, Road Buffers, Fences, and Setback Exceptions.

Overview

The changes incorporated into this text amendment serve two main purposes: to ensure clear alignment of language in the Land Use Ordinance with state enabling legislation, and to clarify sections of the ordinance to improve its use by residents, boards, and staff. The recently adopted comprehensive plan, *Carrboro Connects*, directs the Town across several strategies to examine and update the LUO. In parallel to a larger rewrite of the LUO, this amendment advances goals laid out in the plan to improve the permit review process, and ensure the LUO continues to align with existing state statutes including the Jordan Lake Rules and Chapter 160D. The changes are summarized in the table below:

Topic	Proposed Changes	Impacts
Road Buffers	15-198(b)(1)(b) 15-198(b)(4)(g) 15-312	Clarifies permissible uses and practices in NCDOT rights-of-way that enhance safety and provide opportunities for bike and pedestrian connections
Fences	15-146 15-147 15-184(3)(b)	Clarifies the 50% opaque requirements for fences along the front- and side-yards of properties. Adds the requirement for a zoning permit to construct a fence.
Setback Exceptions	15-92.1	Clarifies the function of this permit by replacing the term “special exception” with “setback exception.”
Water Quality Buffers	15-92(k) 15-269.5(d)	Adds three (3) new uses to the Table of Exempt and Allowable Activities in Water Quality Buffers to align with current Jordan Lake Rules. Clarifies associated findings required for quasi-judicial approval of variances within water quality buffers.

Discussion

Road Buffers

The following NCDOT maintained roads designated for required protective road buffers are as follows (map provided as *Attachment C*):

- Old NC 86
- Dairyland Road
- Union Grove Church Road
- Homestead Road
- Eubanks Road
- Smith Level Road, south of Ray Road

Section 15-198 concerns the provision of open space when land is developed for residential purposes to serve the health, safety, and welfare of the public. Open space includes further designation of primary and secondary conservation areas. Protective road buffers along specific NCDOT-maintained roads are included the definition of primary conservation areas, except for “portions that must be included in road or utility crossings.”

The Town has used this exception to enhance safety via sight triangles at entry and exit points of homes and neighborhoods along these roads. Sight triangles are small patches clear of obstructions that allow for residents leaving a neighborhood to see signage, and passing walkers, cyclists, and vehicles. The Town has also used this exception to create publicly accessible sidewalks, sidepaths, crosswalks, and other pedestrian and bike facilities along and across these roads.

To clarify the long-standing administration of this section and ensure clear alignment with NCDOT practices, this change adds “sight triangles and bicycle pedestrian improvements,” to the list of portions of the buffers that are not considered primary conservation areas. Sight triangles and bike and pedestrian facilities that meet the requirements of Section 15-198 in a dedicated easement will count towards a development’s open space calculation, just not as primary conservation areas. The changes in 15-312 reinforce this language.

Fences

The changes to Section 15-146 and 15-147 add a new use class—35.00 Fence—which is allowed in all zoning districts. Section 15-147 further specifies that a zoning permit is required when a fence is located in a right-of-way setback.

Currently fences constructed or located in a right-of-way setback require a zoning permit; this change makes that requirement clear. As the Town increases density, property owners will have more opportunities to use as much of their lot as possible (i.e. by adding accessory structures and dwelling units); adding clarity to the existing review process will ensure the Town can preemptively address noncompliance rather

than relying on enforcement which requires more staff time. The Town has mitigated several violations and issued variances. Staff know that the current process depends often on property owners approaching the Town, and this is the staff's strategy to address some of these issues.

The Ordinance currently specifies that fences, walls, and berms taller than 3 feet must be substantially opaque if they are:

- located along front lot boundaries adjacent to street rights of way,
- or perpendicular to and located within a certain distance (often 25 feet) of a street right-of-way.

To provide consistent application of the standard, the Zoning Division issued an interpretive memo on September 15, 2021, defining substantially opaque as at least 50 percent open/revealed to 50 percent closed/opaque. The change to section 15-184(3)(b) serves to add an existing interpretive memo's definition of "substantially opaque" into the body of the LUO for clarity to applicants, boards, and staff.

Setback Exceptions

To more clearly indicate the extent of this permit, and to ensure clear alignment with Chapter 160D of the state General Statutes, this change will replace all instances of the term "special exception" with "setback exception." It will not change application for or receipt of the permit through quasi-judicial review by the Board of Adjustment nor modify property owner's right to seek a variance if they are ineligible for the setback exception.

In 2021, the NC General Assembly consolidated existing county and city land use law into Chapter 160D. One change that occurred was the removal of the term "special exception." At the time, the Town reviewed the LUO and decided changing the language of special exception permits was not necessary. Upon further review staff have identified a name change would be clearer, since this permit applies primarily to new buildings and additions to existing buildings that encroach into a setback.

Currently, the Ordinance uses the term "special exception" for a permit that allows an applicant to build or encroach into a lot boundary setback up to 50% or to extend along an existing encroachment that may exceed 50%, provided it meets the building code. Most commonly this is sought by applicants to place a shed at the back of their property or build an addition to a home into the setback. Of note, in districts where the setback is 10', and 50% encroachment would allow buildings to be constructed 5' into the setback, NC Building Code safety requirements of at least 6' between structures still apply.

Water Quality Buffers

The update to the table of exempt and allowable uses in the water quality buffers accomplishes three things:

- Adds 3 uses and related allowances outlined in the state's Jordan Lake Rules (15A NCAC 02B .0267) to the current table (highlighted in *Attachment C*):

- Airport Facilities—staff anticipate this use in Carrboro is unlikely but are including it to make cross-referencing the LUO and the Jordan Lake Rules.
- Recreational and Accessory Structures (sheds, gazebos, and wooden slatted decks),
- and Water Supply Reservoirs
- Updates the use of stormwater best management practices (BMPs) in Zone 1 (within the 30-foot buffer) from “allowable” to “allowable with mitigation” as set forth in the Jordan Lake Rules
- Reorganizes the LUO table alphabetically to match the Jordan Lake Rules to simplify cross-referencing and to help applicants, boards, and staff understand where Carrboro’s regulations are stricter.

Where Carrboro’s regulations are more stringent, there is no change in allowances and exemptions, as the Town can exceed the minimum requirements of the Rule (15A NCAC 02B .0267). Despite the LUO not currently reflecting these uses, the Town is still required to administer the current listed uses outlined in the Rule.

Details and associated exemptions and allowances for existing and new uses can be seen in the table in the draft ordinance (*Attachment B*) and in the annotated version of the current Land Use Ordinance (*Attachment C*).

Public Input

The public hearing schedule allows a handful of opportunities for staff to seek public input. In line with recommendations from the Text Amendment Racial Equity Assessment Lens (REAL), staff have also identified a schedule of outreach events to provide residents information relating to the proposed changes and to seek public input.

DATE	EVENT
May 5	Carrboro Day
May 11	Bike Month Event at the Farmers’ Market
May 18	Carrboro in Motion
May 23	Planning Open House
May 28	Planning Open House

Action Requested

Advisory boards and commissions are asked to review the draft ordinance (*Attachment B*) and consider adopting a recommendation for inclusion in the public hearing materials for June 4th. A recommendation template has been provided for the boards and commissions to use (*Attachment A*).

Attachments

- A – Recommendation Template
- B – Draft Ordinance
- C – Annotated Draft LUO Ordinance
- D – Map of Protective Road Buffers