

ORDINANCE NO. 2014-UDO-01
AN ORDINANCE AMENDING THE TOWN OF MARSHALL
UNIFIED DEVELOPMENT ORDINANCE

WHEREAS, the Town of Marshall Planning Board has recommended a number of text amendments to the Town of Marshall Unified Development Ordinance; and

WHEREAS, after review and consideration of the proposed amendments, it is the desire of the Board of Aldermen of the Town of Marshall to approve the amendments as recommended.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE TOWN OF MARSHALL, NORTH CAROLINA THAT:

Section 4.2.7 Manufactured Homes (on individual lots) is hereby amended by deleting 4.2.7(D) and everything after the comma in 4.2.7(E). The subsections are re-lettered as follows: E becomes D, F becomes E, G becomes F, H becomes G, I becomes H, J becomes I, K becomes J.

Section 4.6.3 (D)(11)(b) is hereby amended by the following by replacing 18 feet with 12 feet.

Section 6.5.2 (B)(1) is hereby amended by changing the last sentence in the Table to read as follows:
Signs shall not extend above the peak of the roof.

Section 7.5.7 (E)(9)(e) is hereby amended to read as follows:

(e) Variances shall only be issued upon:

- i. A showing as required in Section 15.3.3(B) (a,b,c,d).
- ii. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

Steps 4 and 5 of Section 11.4 of the Unified Development Ordinance, Conditional Use Permit Provisions, are hereby amended to read as follows:

11.4 Conditional Use Permit Provisions
Step 4. Public Notice

- (A) For Conditional Use Permits, notice shall be given as provided in Section 15.3.4. ÷
- (B) The notices required by this Section shall state the date, time, and place of the hearing, reasonably identify the lot that is the subject of the application or appeal, and give a brief description of the action requested or proposed.
- (C) The Board of Adjustment may continue the hearing until a subsequent meeting and may keep the hearing open to take additional information up to the point a final decision is made. No further notice of a continued hearing need be published unless a period of six weeks or more elapses between hearing dates.

Step 5. Board of Adjustment Public Hearing & Consideration

- (A) Before making a decision on an application, the Board of Adjustment shall hold a public hearing. A quasi-judicial public hearing shall be held for issuance or revocation of Conditional Use Permits that follows the procedures outlined in Section 15.3.4 of this Ordinance.

Section 11.6.4 of the Unified Development Ordinance, Exceptions from Subdivision Requirements, is hereby amended to read as follows.

11.6.4 Exceptions from Subdivision Requirements
Where strict adherence to any of the provisions of Chapter 10 infrastructure requirements would cause unnecessary hardship, due to topographical or other conditions peculiar to the site in regards to the installation of the improvements, the Board of Adjustment may approve a variance at the Preliminary Plat stage of the subdivision approval process.

Section 15.3.1 of the Unified Development Ordinance, Establishment of the Board of Adjustment, is hereby amended to read as follows.

15.3.1 Establishment of the Board of Adjustment

- (A) There shall be and hereby is created a zoning Board of Adjustment consisting of five members to be appointed by the Town Board. The Town Board shall also appoint two alternate members to serve on the Board of Adjustment in the absence, for any cause, of any regular member. Such alternate members while attending any regular or special meeting of the zoning board and serving in the absence of any regular member, shall have and exercise all the powers and duties of such regular member so absent. In no case, however, shall more than five regular members or combination of regular members and the alternate members be empowered to participate officially in any meeting or hearing, including asking questions of witnesses or

engaging in deliberation of the case, make motions or to vote on any matter that comes before the Board involving the Unified Development Ordinance.

(B) Members of the Board of Adjustment shall serve a term of three years, provided that upon initial appointment the terms of office may be staggered. In filling vacancies created by resignation or other causes, a new member may be appointed to fill the unexpired term of the member so vacating. Alternate members shall be appointed for three year terms in the same manner as regular members.

Section 15.3.2 of the Unified Development Ordinance, Board of Adjustment Meetings, is hereby amended to read as follows.

15.3.2 Board of Adjustment Meetings

(A) All meetings of the Board shall be held at a regular place and shall be open to the public. The Board shall keep minutes of its proceedings in a book maintained for that purpose only, showing the vote of each member upon each question, or if absent or failing to vote, an indication of such fact; and final disposition of appeals shall be by recorded resolution indicating the reasons of the Board therefore, all of which shall be a public record. No final action shall be taken on any matter unless a quorum is present.

(B) A quorum for the Board of Adjustment shall consist of the number of members equal to 4/5ths of the Board membership (excluding vacant seats). A quorum is necessary for the Board to take official action.

(C) The concurring vote of four-fifths of the Board shall be necessary to grant any Variance. A majority of the members shall be required to decide any other quasi-judicial matter or to determine an appeal made in the nature of certiorari. For the purposes of this subsection, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered members of the board for calculation of the requisite majority if there are no qualified alternates available to take the place of such members.

(D) Once a member is physically present at a Board meeting, any subsequent failure to vote shall be recorded as an affirmative vote unless the member has been excused or has been allowed to withdraw from the meeting.

(E) A member of the board or any other body exercising quasi-judicial functions pursuant to this Article shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible conflicts include, but are not limited to:

- (1)** A financial interest in the outcome of the matter, or
- (2)** Undisclosed ex parte communications, or

(3) A close familial, business, or other associational relationship with an affected person, or

(4) A member having a fixed opinion prior to hearing the matter that is not susceptible to change.

(F) If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection.

Section 15.3.3 of the Unified Development Ordinance, Powers & Duties, is hereby amended to read as follows:

The Board of Adjustment shall have the following powers and duties:

(A) Appeals

(1) The Board of Adjustment shall hear and decide appeals from any decision or determination made by the Administrator in the enforcement of this ordinance and may hear appeals arising out of any other ordinance that regulates land use or development including Subdivision and Flood Damage Prevention. As used in this section, the term "decision" includes any final and binding order, requirement, or determination. The Board shall hear and decide appeals pursuant to all of the following:

(a) Any person who has standing under G.S. 160A-393(d) or the town may appeal a decision to the board of adjustment. An appeal is taken by filing a notice of appeal with the town clerk. The notice of appeal shall state the grounds for the appeal.

(b) The official who made the decision shall give written notice to the owner of the property that is the subject of the decision and to the party who sought the decision, if different from the owner. The written notice shall be delivered by personal delivery, electronic mail, or by first-class mail.

(c) The owner or other party shall have 30 days from receipt of the written notice within which to file an appeal. Any other person with standing to appeal shall have 30 days from receipt from any source of actual or constructive notice of the decision within which to file an appeal. All appeals shall be made upon the form specified for that purpose, and all information required on the form shall be complete before an appeal or application shall be considered as having been filed. Once appeals have been filed with the town clerk, the clerk shall immediately notify the chair of the Board of Adjustment that such appeals have been received.

(d) It shall be conclusively presumed that all persons with standing to appeal have constructive notice of the decision from the date a sign containing the

words "Zoning Decision" or "Subdivision Decision" in letters at least six inches high and identifying the means to contact an official for information about the decision is prominently posted on the property that is the subject of the decision, provided the sign remains on the property for at least 10 days. Posting of signs is not the only form of constructive notice. Any such posting shall be the responsibility of the landowner or applicant. Verification of the posting shall be provided to the official who made the decision.

(e) The official who made the decision shall transmit to the board all documents and exhibits constituting the record upon which the action appealed from is taken. The official shall also provide a copy of the record to the appellant and to the owner of the property that is the subject of the appeal if the appellant is not the owner.

(f) An appeal of a notice of violation or other enforcement order stays enforcement of the action appealed from unless the official who made the decision certifies to the board of adjustment after notice of appeal has been filed that because of the facts stated in an affidavit, a stay would cause imminent peril to life or property or because the violation is transitory in nature, a stay would seriously interfere with enforcement of the ordinance. In that case, enforcement proceedings shall not be stayed except by a restraining order, which may be granted by a court. If enforcement proceedings are not stayed, the appellant may file with the official a request for an expedited hearing of the appeal, and the board of adjustment shall meet to hear the appeal within 15 days after such a request is filed. Notwithstanding the foregoing, appeals of decisions granting a permit or otherwise affirming that a proposed use of property is consistent with the ordinance shall not stay the further review of an application for permits or permissions to use such property; in these situations the appellant may request and the board may grant a stay of a final decision of permit applications or building permits affected by the issue being appealed.

(g) Subject to the provisions of subdivision (f) of this subsection, the board of adjustment shall hear and decide the appeal within a reasonable time.

(h) The official who made the decision shall be present at the hearing as a witness. The appellant shall not be limited at the hearing to matters stated in the notice of appeal. If any party or the city would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the board shall continue the hearing. The board of adjustment may reverse or affirm, wholly or partly, or may modify the decision appealed from and shall make any order, requirement, decision, or determination that ought to be made. The board shall have all the powers of the official who made the decision.

(i) When hearing an appeal pursuant to G.S. 160A-400.9(e) or any other appeal in the nature of certiorari, the hearing shall be based on the record below and the scope of review shall be as provided in G.S. 160A-393(k).

(j) The parties to an appeal that has been made under this subsection may agree to mediation or other forms of alternative dispute resolution

(B) Variances

(1) Upon application, when unnecessary hardships would result from carrying out the strict letter of a zoning ordinance, the Board of Adjustment shall vary any of the provisions of the ordinance upon a showing of all of the following:

(a) Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.

(b) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.

(c) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.

(d) The requested Variance is consistent with the spirit, purpose and intent of this ordinance, such that public safety is secured, and substantial justice is achieved

(e) For Flood Hazard Areas additional conditions as stated in Section 7.5.7(E)(9) apply.

(f) No change in permitted uses may be authorized by variance.

Appropriate conditions may be imposed on any variance, provided that the conditions are reasonably related to the variance. Any other ordinance that regulates land use or development may provide for variances consistent with the provisions of this subsection.

(C) Conditional Use Permits

Upon application, the Board of Adjustment may grant in particular cases and subject to the appropriate conditions and safeguards, permits for conditional uses as authorized by this ordinance and set forth as conditional uses in the Permitted Uses Table in Chapter 3. A Conditional Use Permit may be granted by the Board of Adjustment in accordance with the requirements of Section 11.4.

Section 15.3.4 of the Unified Development Ordinance, Hearing Process, is hereby amended to read as follows:

15.3.4 Hearing Process

(A) Appeals from the enforcement and interpretation of this Ordinance, requests for Variances, and requests for Conditional Use Permits shall be filed with the Administrator specifying the grounds thereof. The Administrator shall transmit to the Board of Adjustment all applications and records pertaining to such appeals and variances.

(B) The Board of Adjustment shall fix a reasonable time for the hearing of the Appeal, Variance, or Conditional Use Permit give due notice thereof, and decide it within a reasonable time. Due notice shall be given as follows:

(1) Notice of hearings conducted pursuant to this section shall be mailed to the person or entity whose appeal, application, or request is the subject of the hearing; to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing; to the owners of all parcels of land abutting the parcel of land that is the subject of the hearing, including those located across a right-of-way; and to any other persons entitled to receive notice as provided by the unified development ordinance. In the absence of evidence to the contrary, the town may rely on the county tax listing to determine owners of property entitled to mailed notice. The notice shall be deposited in the mail at least 10 but not more than 25 days prior to the date of the public hearing.

(2) Within that same time period, the town shall prominently post a notice of the hearing on the site that is the subject of the hearing on an adjacent street or highway right-of-way. When multiple parcels are involved, a posting on each individual parcel is not required, but the Town shall post sufficient notices to provide reasonable notice to interested persons. The Administrator may elect to take any other action deemed to be useful or appropriate to give notice of the public hearing on any proposed amendment.

(C) Subpoenas. The Board of Adjustment through the chair, or in the chair's absence anyone acting as chair, may subpoena witnesses and compel the production of evidence. To request issuance of a subpoena, persons with standing under G.S. 160A-393(d) may make a written request to the chair explaining why it is necessary for certain witnesses or evidence to be compelled. The chair shall issue requested subpoenas he or she determines to be relevant, reasonable in nature and scope, and not oppressive. The chair shall rule on any motion to quash or modify a subpoena. Decisions regarding subpoenas made by the chair may be appealed to the full board of adjustment. If a person fails or refuses to obey a subpoena issued pursuant to this

subsection, the board of adjustment or the party seeking the subpoena may apply to the General Court of Justice for an order requiring that its subpoena be obeyed, and the court shall have jurisdiction to issue these orders after notice to all proper parties.

(D) Oaths. All persons who present evidence or speak to the Board of Adjustment shall be sworn. The chair of the board or any member acting as chair and the secretary are authorized to administer oaths to witnesses in any matter coming before the board. Any person who, while under oath during a proceeding before the board of adjustment, willfully swears falsely is guilty of a Class 1 misdemeanor.

(E) The board shall determine contested facts and make its decision within a reasonable time. Every quasi-judicial decision shall be based upon competent, material, and substantial evidence in the record. Each quasi-judicial decision shall be reduced to writing and reflect the board's determination of contested facts and their application to the applicable standards. The written decision shall be signed by the chair or other duly authorized member of the board. A quasi-judicial decision is effective upon filing the written decision with the secretary. The decision of the board shall be delivered by personal delivery, electronic mail, or by first-class mail to the applicant, property owner, and to any person who has submitted a written request for a copy, prior to the date the decision becomes effective. The person required to provide notice shall certify that proper notice has been made.

All findings and conclusions necessary to the issuance or denial of the requested permit, variance, or appeal (crucial findings) shall be based upon reliable evidence. Competent evidence (evidence admissible in a court of law) shall be preferred whenever reasonably available, but in no case may crucial findings be based solely upon incompetent evidence unless competent evidence is not reasonably available, the evidence in question is determined to be reliable, and the matter at issue is not seriously disputed.

(F) Every quasi-judicial decision of the Board shall be subject to review by the Madison County Superior Court by proceedings in the nature of certiorari pursuant to G.S. 160A-393. A petition for review shall be filed with the clerk of superior court by the later of 30 days after the decision is effective or after a written copy thereof is given in accordance with subsection (E) above. When first-class mail is used to deliver notice, three days shall be added to the time to file the petition.

Section 15.3.5 of the Unified Development Ordinance, Application Fees, is hereby amended to read as follows:

15.3.5 Application Fees

The Board of Aldermen shall set a fee, payable to the Town of Marshall, North Carolina, to cover the necessary administrative costs and advertising of each application for the proceeding. The set fee shall be posted in Town Hall.

Appendix A – Definitions

Flood Damage Prevention Definitions, Regulatory Flood Protection Elevation is hereby amended by replacing “two (2) feet” with “one (1) foot” .

A new definition is added as follows:

Wall (Retaining wall) means a structure between lands of different elevations to stabilize the surfaces, prevent erosion and/or protect structures.

This ordinance shall be in full force and effect from and after the date of its adoption.

Adopted and approved this 16th day of June, 2014

ATTEST:

Karen Kiehna
Town Clerk

Lawrence Ponder
Mayor