



Orange County Planning and Inspections Department

**BOARD OF ADJUSTMENT:
APPLICATION FOR AN APPEAL/ INTERPRETATION**

The Orange County Board of Adjustment with a four-fifths (4/5) vote, may overturn or modify an interpretation of an Administrative Official for the Orange County Planning Department concerning the enforcement and/or the interpretation of a specific provision of the Unified Development Ordinance (UDO). Under the State-enabling act, the review of an interpretation by the Board of Adjustment is not intended to vary the UDO but to interpret and apply what the governing body has written and how it is being implemented in a particular circumstance. The decision of the Board of Adjustment shall be in accord with what the members believe to be the actual meaning and intent of the UDO.

RELIEF REQUESTED: *Please check all applicable boxes and complete the required documentation attached.*

APPEAL:

INTERPRETATION:

I, Walt Lobotsky and Preserve Rural Orange hereby appeal to the Board of Adjustment from the following adverse decision of an Administrative Official of the Planning and Development Department of the County of Orange, North Carolina made on the 1st day of February, 2012.

The decision ordered that: _____

On February 1, 2012 the University of North Carolina's site plan application submitted 12/9/11 for the UNC Animal Research Facility in Bingham Township was approved, and a Zoning Compliance Permit was issued.

This adverse decision was made with respect to property described in the attached General Application form.

I, _____ hereby request an interpretation of:

The Zoning Map

The Unified Development Ordinance (UDO), Section _____

insofar as it relates to the use of the property described in the attached General Application form.

**** NOTE:** If the owner of the property subject to this application **is not** the same as the appellant, a notarized letter from the owner signifying his/her approval authorizing the submittal of the application shall be required **

In the space provided below, or on an attached letter, present your interpretation of the ordinance provision in question and state what reasons you have for believing that your interpretation is the correct one:

On February 1, 2012 the Orange County Planning Department approved a site plan application submitted on December 9, 2011 for the University of North Carolina's Animal Research Facility in Bingham Township. UNC's site plan includes a replacing and modifying a failed wastewater system with a new wastewater treatment and spray irrigation system with a design capacity of 3,556 gallons per day.

Due to the size of the proposed UNC wastewater system (3,000 gallons per day or more), the University is required by county ordinance to apply for a Special Use Permit. Without an approved Special Use Permit, UNC's 3,000+ gallon per day wastewater system is prohibited in the Agricultural Residential district (UDO Section 3.3).

In April 2010, Planning Department staff determined that UNC was required to apply for a Class A Special Use Permit for the facility. Planning staff later reversed the determination in November 2010. Preserve Rural Orange believes that Planning Department staff's first determination was correct in requiring UNC to apply for a Special Use Permit.

In its letter of October 28, 2010 to Mr. Benedict, UNC states that G.S. 153-347 (presumably citing to G.S. 153A-347) precludes the County from regulating the wastewater system and that State water quality rules pre-empt the County's ability to regulate the system. Both interpretations unreasonably and unlawfully restrict the County's authority to regulate wastewater systems with a capacity greater than 3,000 gallons per day.

There are multiple areas of concern regarding UNC's site plan for the animal research facility, including public health, safety, security, impacts on the watershed and water supply, and storage, transport and disposal of animal waste. The Special Use Permit application and review process provides the Board of County Commissioners with the ability to fulfill "its responsibility to protect the public health safety and general welfare" (UDO 5.1.3) and allows county citizens to share concerns.

In 2009 and 2010 the UNC facility's wastewater system was found in violation of county, state and federal regulations. County Planning Department staff issued a notice to UNC that a the UNC facility's 3,000+ gallon per day wastewater system was installed and operating without the required Special Use Permit. In 2010, the North Carolina Division of Water Quality issued three notices of violation, a revocation of a deemed permit and civil penalties on UNC facility's wastewater systems in four months following a series of wastewater equipment failures, chemical contamination of the septic system, incursions into previously undisclosed wetlands, and illegal discharges, including an illegal discharge from a leaking waste lagoon into a tributary of Collins Creek that went unreported for 52 days. The Army Corps of Engineers issued a notification of unauthorized activity/permit noncompliance to UNC for failing to submit a Nationwide Permit Pre-construction Notification when constructing wastewater spray irrigation fields and a new access road in wetlands, in violation of the federal Clean Water Act. The 2006 Environmental Assessment submitted for the project in 2006 states that there will be no significant impacts and that there are no wetlands on the UNC property.

On April 9, 2010 Planning Department staff sent a letter to UNC requiring the University to apply for a Class A Special Use Permit, citing the following determination:

In answering the University's question relating to the necessary process to review proposed modifications to the previously approved site plan(s), and based on available information, staff has determined that the University will be required to submit and seek approval of a Class A Special Use Permit Application allowing for the development of a facility requiring a ground absorption system with a design capacity over three thousand (3,000) gallons per day.

The April 9th Planning Department letter cited the following Orange County ordinance:

Section 6.20 of the Ordinance prohibits the location of *'ground absorption systems with a design capacity of 3,000 gallons per day or more and package treatment plants for sanitary sewage disposal'* without the submittal, review and issuance of a Class A Special Use Permit in accordance with the provisions of Article Eight (8)....

Planning Department staff reversed this determination requiring a Class A Special Use Permit in a November 11, 2010 letter to the University:

While staff continues to maintain that we are not seeking to regulate the proposed septic system through a zoning approval process, and we reserve the right to continue monitoring the use of the existing facility in order to evaluate its compliance with existing development regulations, through this letter we hereby modify our original determination and find that a SUP **is not** required to allow for the installation/modification of the septic system on the property as currently proposed by the University.

According to AR District Specific Development Standards, UNC's wastewater facility requires a Special Use Permit.

UDO (Section 3.3):

6. With the exception of Orange County government development projects, wastewater treatment facilities with a design capacity of 3,000 gallons per day or more and package treatment plants for sanitary sewage disposal are prohibited in the AR zoning district unless approved through the Special Use Permit (SUP) process or as a Conditional Use (CU) District.

The UDO offers the following definition of a Wastewater Treatment Facility (UDO Section 10:1):

Wastewater Treatment Facility

A system of wastewater collection, treatment, and disposal in single or multiple components, including ground absorption systems, non-discharge systems, and systems that discharge effluent to the surface waters, and any other system as may be permitted by the Orange County Health Department or the State of North Carolina. (ref. NCGS Article 11, Chapter 130A)

The UDO specifies that replacements and modifications of land uses in existence prior to adoption of zoning regulations require Special Use Permit application submittal, review and approval (UDO Section 8.6):

SPECIAL PERMIT USES

Any land use that:

(A) Was in existence prior to adoption of zoning regulations and would require the issuance of a Special Use Permit under terms of this Ordinance, or

(B) Is made non-conforming due to an amendment of this Ordinance changing the review and approval criteria of said land use from permitted to either a Class A or B Special Use.

Shall be deemed a conforming use of property within the confines of this Ordinance, subject to the following limitation: Any enlargement, replacement or modification of such a use shall require submittal, review, and approval of a Special Use Permit application as though it were a new use.

In conclusion, Preserve Rural Orange urges the Board of Adjustment to find that the first interpretation of the County Ordinances by Mr. Harvey in his letter of April 9, 2010 to UNC was correct and that the construction activities associated with the development of the UNC operated research facility require a special use permit. PRO hereby requests a hearing on this matter at the Board's convenience.

Applicants respectfully request that the county waive the \$540 staff review fee and \$800 advertising fee for the appeal.
