

ARTICLE VIII
AMENDMENTS

8-1 AMENDMENTS IN GENERAL

- (A) Amendments to the text of this Ordinance or to the zoning map may be made in accordance with the provisions of this Article.
- (B) Conditional use district zoning requests shall be made in accordance with the provisions of Section 8-7.
- (C) As provided in NCGS 160A-385 (b), amendments, modifications, supplements, repeal or other changes in zoning regulations and restrictions and zone boundaries shall not be applicable or enforceable without consent of the owner with regard to buildings and uses for which either (i) a building permit has been issued pursuant to NCGS 160A-417 prior to the enactment of the ordinance making the change or changes as long as the permit remains valid and unexpired pursuant to NCGS 160A-418 and unrevoked pursuant to NCGS 160A-422 or (ii) a vested right has been established pursuant to NCGS 160A-385.1 and the provisions of Section 4-15 of this Ordinance and such vested right remains valid and unexpired.
- (D) The review process for an amendment to the text of this Ordinance or to the zoning map shall include:
 - (1) Community Development Department staff review;
 - (2) Planning and Zoning Board review and recommendation in accordance with Section 8-3; and
 - (3) City Council review and action.

8-2 INITIATION OF AMENDMENTS

- (A) Any person or organization may petition the City Council to amend this Ordinance. The petition shall be filed with the Zoning Administrator and shall include, among the information deemed relevant by the Zoning Administrator:
 - (1) The name, address, and phone number of the applicant;
 - (2) A metes and bounds description and a scaled map of the land affected by the amendment if a change in zoning district classification is proposed; and
 - (3) A description of the proposed map change or a summary of the specific objective of any proposed change in the text of this Ordinance.
- (B) Petitions for amendments shall be submitted to the Zoning Administrator 21 days prior to the date of the Planning and Zoning Board meeting at which the petition will be reviewed.

8-3 PLANNING AND ZONING BOARD REVIEW AND RECOMMENDATION

- (A) Upon receipt of a petition for an amendment, the Zoning Administrator shall forward the request to the Planning and Zoning Board for its consideration.
- (B) The Planning and Zoning Board shall review the proposed amendment and submit its recommendation to the City Council. The Planning and Zoning Board shall have 45 days within which to submit its recommendation. Failure of the Planning and Zoning Board to submit its recommendation within this time period shall constitute a favorable recommendation.

8-4 CITY COUNCIL REVIEW AND ADOPTION

- (A) Upon receipt of a recommendation from the Planning and Zoning Board, the City Council shall set a date for a public hearing on the proposed amendment. The public notice required for the public hearing shall be in accordance with Section 8-5.
- (B) At the conclusion of a public hearing on the proposed amendment, the City Council may proceed to vote on the proposed amendment, refer it to a committee for further study, or take any other action consistent with its usual rules of procedure.
- (C) The City Council need not await the recommendations of the Planning and Zoning Board before taking action on a proposed amendment nor is the City Council bound by any recommendations of the Planning and Zoning Board that are before it at the time it takes action on a proposed amendment.
- (D) The City Council is not required to take final action on a proposed amendment within any specific period of time, but it should proceed as expeditiously as practicable on petitions for amendments since inordinate delays can result in the petitioner incurring unnecessary costs.
- (E) Voting on amendments to this Ordinance shall proceed in the same manner as other ordinances.

8-5 PUBLIC HEARING REQUIREMENTS

- (A) No ordinance that amends any of the provisions of this Ordinance may be adopted until a public hearing has been held on such ordinance.
- (B) The City Clerk shall publish a notice of the public hearing on any ordinance that amends the provisions of this Ordinance once a week for two successive weeks in a newspaper having general circulation in the City. The notice shall be published for the first time not less than ten days nor more than twenty-five days before the date fixed for the public hearing. In computing this period, the date of publication shall not be counted but the date of the public hearing shall be.
- (C) With respect to map amendments, the City Clerk shall provide first class mail notice of the public hearing to the record owners for tax purposes of all properties whose zoning classification is changed by the proposed amendment as well as the owners of all properties within 100 feet of the property rezoned by the amendment. The Zoning Administrator may also post notices of the public hearing in the vicinity of the property rezoned by the proposed amendment and take any other action deemed by the Zoning Administrator to be useful or appropriate to give notice of the public

hearing.

- (D) The notice required in subsection (C) shall not be required if the zoning map amendment directly affects more than 50 properties, owned by a total of at least 50 different property owners. In this instance, the City may elect, in lieu of the mail notice specified in subsection (C), to publish once a week for four successive calendar weeks in a newspaper having general circulation in the area an advertisement of the public hearing that shows the boundaries of the area affected by the proposed zoning map amendment and that explains the nature of the proposed change. The advertisement shall not be less than one-half of a newspaper page in size. The advertisement shall only be effective for property owners who reside in the area of general circulation of the newspaper that publishes the notice. Property owners who reside outside the city's jurisdiction or outside of the newspaper circulation area, according to the address listed on the most recent property tax listing for the affected property, shall be notified by mail pursuant to subsection (C). The person or persons mailing the notices shall certify to the City Council that fact, and the certificates shall be deemed conclusive in the absence of fraud. In addition to the published notice, the City shall post one or more prominent signs immediately adjacent to the subject area reasonably calculated to give public notice of the proposed rezoning.
- (E) The notice required or authorized by this Section shall:
 - (1) State the date, time, and place of the public hearing;
 - (2) Summarize the nature and character of the proposed change;
 - (3) If the proposed amendment involves a change in zoning district classification, reasonably identify the property whose classification would be affected by the amendment;
 - (4) State that the full text of the amendment can be obtained from the City Clerk;
 - (5) State that substantial changes in the proposed amendment may be made following the public hearing; and
 - (6) Specifically state that a special use permit will also be reviewed when the amendment request involves a conditional use district rezoning.
- (F) The person or persons mailing notices to adjoining property owners, as defined in NCGS 160A-384 (a), shall certify to the City Council that fact.

8-6 ULTIMATE ISSUE BEFORE CITY COUNCIL ON AMENDMENTS

In deciding whether to adopt a proposed amendment to this Ordinance, the central issue before the City Council is whether the proposed amendment advances the public health, safety or welfare. All other issues are irrelevant, and all information related to other issues at the public hearing may be declared irrelevant by the Chairman and excluded. When considering proposed map amendments:

- (A) Except for rezoning requests submitted in accordance with Section 8-7, the City Council shall not consider any representations made by the petitioner that, if the change is granted, the rezoned property will be used for only one of the possible

range of uses permitted in the requested classification. Rather, the City Council shall consider whether the entire range of permitted uses in the requested classification is more appropriate than the range of uses in the existing classification.

- (B) The City Council shall not regard as controlling any advantages or disadvantages to the individual requesting the change, but shall consider the impact of the proposed change on the public at large.

8-7 CONDITIONAL USE DISTRICT REZONINGS

- (A) There are circumstances in which a general zoning district designation allowing a use by right would not be appropriate for a particular property even though the use itself could, if properly planned, be appropriate for the property consistent with the objectives of this Ordinance and the adopted Land Development Plan. The review process established in this Section provides for the accommodation of such uses by a reclassification of property into a conditional use district, subject to specific conditions which ensure compatibility of the use with the use and enjoyment of neighboring properties.
- (B) The conditional use district approval process is established to address those situations when a particular use may be acceptable but the general zoning district which would allow that use would not be acceptable. It allows the City Council to approve a proposal for a specific use with reasonable conditions to assure the compatibility of the use with surrounding properties. Any use permitted under this process must also conform to the development regulations for the corresponding general zoning district. This is a voluntary procedure that is intended for firm development proposals. It is not intended or suited for securing early zoning for tentative proposals that may not be undertaken for some time. Uses that may be proposed and considered for a conditional use district shall be restricted to those uses permitted in the underlying general zoning district either by right or by conditional or special use permit. If the proposed use is one allowed by conditional use permit, it shall be reviewed and approved by the City Council rather than the Board of Adjustment. Approval of a petition for conditional use district zoning shall result in (i) the zoning classification being changed to the requested conditional use district designation and (ii) the issuance of a special use permit for the approved use.

The conditional use district rezoning process essentially combines the map amendment and the special use permit review and approval processes. The conditional use district rezoning review and approval process shall include the following steps:

- (1) Review by the Planning and Zoning Board and recommendation to the City Council.
 - (2) Public hearing by the City Council using quasi-judicial hearing procedures as delineated in Section 4-7.7.
 - (3) Decision by the City Council on the rezoning request.
 - (4) If the rezoning request is approved, decision by the City Council on the special use permit request.
- (C) No conditional use district shall be established until after the person proposing the

district has submitted a petition for the reclassification of property and the City Council has approved such petition in accordance with the procedures delineated in Sections 8-2 through 8-4. A conditional use district zoning petition shall be signed by all of the owners of the property(ies) included in the petition. Every petition for the reclassification of property to a conditional use district shall be accompanied by a site plan containing the requisite information specified in Appendix A and by an application for a special use permit. In the course of evaluating the proposed use, the City Council may request additional information deemed appropriate to provide a complete analysis of the proposal.

- (D) The City Council may approve the reclassification of property to a conditional use district only upon determining that the proposed use will meet all standards and requirements in these regulations that are applicable to the proposed use. In approving a petition for the reclassification of property to a conditional use district, the Planning and Zoning Board may recommend and the City Council may attach reasonable and appropriate conditions to approval of the petition. Any such conditions should relate to the relationship of the proposed use to surrounding property, proposed support facilities such as parking areas and driveways, pedestrian and vehicular circulation systems, screening and buffer areas, the timing of development, street and right-of-way improvements, water and sewer improvements, stormwater drainage, the provision of open space, and other matters that the City Council may find appropriate or that the petitioner may propose. Such conditions to approval of the petition may include dedication of any rights-of-way or easements for streets, water, sewer, or other public utilities necessary to serve the proposed development. The petitioner shall have a reasonable opportunity to consider and respond to any such conditions prior to final action by the City Council.
- (E) If a petition is approved under this Section, the district that is established, the approved petition, the approved special use permit, and all conditions which may have been attached to the approval are binding on the property as an amendment to this Ordinance and to the zoning map. All subsequent development and use of the property shall be in accordance with the standards for the approved conditional district, the approved petition, and all conditions attached to the approval. Only those uses and structures indicated in the approved petition and site plan shall be allowed on the subject property. Any development in the district shall comply with all provisions of and conditions to the approved petition and site plan. Any uses and structures on the subject property shall also comply with all standards and requirements for development in the underlying general zoning district.
- (F) Following the approval of the petition for a conditional use district, the subject property shall be identified on the zoning map by the appropriate district designation. A conditional use district shall be identified by the same designation as the underlying general zoning district followed by the letters 'CU' [for example, GB-CU]. An accompanying special use permit shall be issued to the applicant upon approval of the petition.
- (G) Except as provided in subsection (H), changes to the approved petition or to the conditions attached to the approval shall be treated the same as amendments to this Ordinance or to the zoning map and shall be processed in accordance with the procedures in this Article.
- (H) Minor changes in the detail of the site plan which will not alter the basic relationship of the proposed development to surrounding properties or the standards and

requirements of these regulations or to any conditions attached to the approval may be approved by the Zoning Administrator without going through the amendment process or a public hearing. The Zoning Administrator, at his discretion, may forward any application for changes in detail to the City Council for its consideration as an amendment to this Ordinance or the zoning map. The applicant may appeal the decision of the Zoning Administrator to the Board of Adjustment for review and decision as to whether an amendment to the approved district shall be required.

- (I) It is intended that property shall be reclassified to a conditional use district only in light of firm plans to develop the property. Therefore, if all applicable permits are not obtained within one year from the date of approval of the rezoning petition to a conditional use district or if any owner of the property rezoned challenges a condition applicable to the case, the Zoning Administrator shall either initiate a reclassification of the property in accordance with the procedures established in this Article or shall forward a report to the City Council recommending that the property be reclassified to the original zoning district or to another district.
- (J) After a certificate of occupancy has been issued for the development approved as a conditional use district, the Zoning Administrator shall periodically inspect the use and maintenance of the subject property to ensure continued compliance with this Ordinance, the approved petition and site plan, and any conditions attached by the City Council to approval of the petition.

8-8 AMENDMENTS TO WATERSHED PROTECTION PROVISIONS

The Zoning Administrator shall keep a record of all text amendments to this Ordinance which involve regulations, standards, or procedures regarding public water supply watersheds as outlined in Section 10-1. Copies of all such amendments shall, upon adoption, be provided to the Supervisor of the Classification and Standards Group, Water Quality Section, N.C. Division of Environmental Management. Under no circumstances shall an amendment be adopted which would cause this Ordinance to violate the public water supply watershed rules as adopted by the NC Environmental Management Commission.

8-9 AMENDMENTS TO FLOOD HAZARD ZONING AND FLOOD HAZARD BOUNDARY MAP

- (A) All requests for revisions of areas of special flood hazard boundaries and base flood elevations shall be reviewed and approved by the Federal Emergency Management Agency.
- (B) The existing location of any area of special flood hazard as defined in Section 10-2 may be amended in cases where:
 - (1) A flood control project of the federal, state, City or municipal government has substantially altered the flood hazard;
 - (2) Flood data indicates that the boundaries of either of the areas as shown on the official flood boundary and floodway map are no longer correct; or
 - (3) A private individual, corporation, firm or municipal agency has submitted plans for a channel improvement or relocation requiring an amendment to the official flood hazard boundary map.

- (C) Applications for an amendment to the official flood boundary and floodway map shall be processed in the same manner as an amendment to the official zoning map. The applicant shall be responsible for submitting the proposed amendment and supporting documentation to the Federal Emergency Management Agency (FEMA) for its approval. The application for flood zone map amendments shall be deemed incomplete if not accompanied by a letter of approval from FEMA.
- (D) All amendments to the official flood boundary map and floodway map shall be filed in accordance with NCGS 143-215.56(c).

8-10 PROTESTS TO ZONING DISTRICT CHANGES

- (A) If a petition opposing a change in the zoning classification of any property is filed in accordance with the provisions of this Section, then the proposed amendment may be adopted only by a favorable vote of four-fifths of the membership of the City Council. In accordance with the provisions of NCGS 160A-385 (a), provisions regarding protest shall not be applicable to any amendment which initially zones property added to the territorial coverage of the ordinance as a result of annexation or otherwise, or to an amendment to an adopted conditional use district if the amendment does not (i) change the types of uses that are permitted within the district, (ii) increase the approved density for residential development, or (iii) reduce the size of any buffers or screening approved for the conditional use district.
- (B) To invoke the four-fifths vote requirement, the petition must:
 - (1) Be signed by the owners of twenty percent or more either of (i) the lots included in a proposed change, or (ii) the lots within 100 feet of either side or the rear of the tract to be rezoned, or (iii) the lots directly opposite the tract to be rezoned and extending 100 feet from the street frontage of such opposite lots.
 - (2) Be in the form of a written petition actually bearing the signatures of the requisite number of property owners and stating that the signers do protest the proposed change or amendment.
 - (3) Be received by the Zoning Administrator in sufficient time to allow the City at least two normal working days before the date established for a public hearing on the proposed amendment to determine the sufficiency and accuracy of the petition. For purposes of this subsection, the date of the public hearing shall not be counted as a normal working day.
 - (4) Be on a form provided by the Zoning Administrator and contain all the information requested on this form.

8-11 WITHDRAWAL OF AMENDMENT PETITION

The petitioner shall have the right to withdraw, in writing, an amendment petition at any time prior to a final decision by the City Council. However, petitions that have been withdrawn shall be reconsidered only as a new petition and shall adhere to the submission and review requirements of Sections 8-1 through 8-5.

8-12 PETITION RESUBMITTAL

If an amendment petition is denied by the City Council, the Zoning Administrator shall not accept a rezoning petition similar to that denied for the same property or a portion of the property within six months of the Council's action, except that the Zoning Administrator may accept a new rezoning petition within the 6-month period if the Zoning Administrator determines that:

- (1) There has been a significant change in the zoning district classification of an adjacent property;
- (2) A new or updated land use plan which changes public policy regarding the property is adopted by the City
- (3) Public facilities such as streets, water lines, sewer lines, or other infrastructure are constructed or expanded to serve the property and enable the proposed development to be accommodated; or
- (4) There has been some other significant change, other than a change in ownership of the property, which might justify waiving the 6-month restriction on submitting a new petition.

8-13 NOTIFICATION OF DECISION

Within five working days of any action by the City Council on an amendment petition, notice of such action shall be sent by first-class mail to the petitioner and any other persons who have indicated to the Zoning Administrator, in writing, that they would like the decision mailed to them. Additionally, within 15 days after the effective date of a zoning change to commercial or industrial zones within 660 feet of the right-of-way of an interstate or primary highway, written notice by registered mail shall be sent to the Raleigh offices of the North Carolina Department of Transportation in accordance with NCGS 136-136 and 136-153.