

ARTICLE 15. AMENDMENTS AND SPECIAL USE PERMITS

15.1 General

The City Council may amend, supplement, or change the Zoning Ordinance text and zoning district lines and designations according to the following procedure. It is the intent of this Ordinance that the applicant for rezoning to any district other than a Conditional Zoning District shall be prohibited from offering any testimony or evidence concerning the specific manner in which he/she intends to use or develop the property. If the applicant believes that the development of his/her property in a specific manner will lessen adverse effects upon surrounding properties or otherwise make the rezoning more in accordance with the principles underlying the City's comprehensive zoning plan, he/she shall apply for rezoning to the appropriate Conditional Zoning District specifying the nature of his/her proposed development. No permit shall be issued for any development within a Conditional Zoning District except in accordance with the approved site plan and written conditions.

15.1.1 Written Comments

Zoning ordinances may from time to time be amended, supplemented, changed, modified, or repealed. If any resident or property owner in the City submits a written statement regarding a proposed amendment, modification, or repeal to the zoning ordinance to the City Clerk at least two business days prior to the proposed vote on such change, the City Clerk shall deliver such written statement to the City Council. If the proposed change is subject of a quasi-judicial proceeding under NCGS 160D-406, the Clerk shall provide only the names and addresses of the individuals providing written comment, and the provision of such names and addresses to all members of the Council shall not disqualify any member of the Council from voting

15.2 Zoning Map and Text Amendments

15.2.1 Amendment Initiation

Zoning text and map amendments initiated by the City Council must be submitted to the Planning and Zoning Board for its review and comment. If no written report is received from the Planning and Zoning Board within 30 days of the initial review of the amendment by that board, the City Council may proceed in its consideration of the amendment without the Planning and Zoning Board report. The governing board is not bound by the recommendations, if any, of the Planning and Zoning Board. Amendments may be initiated to the text of the Ordinance or the Official Zoning map may be initiated as follows:

15.2.2 Text Amendment:

1. the City Council;
2. the Planning and Zoning Board;
3. the City Manager or Planning Director; or
4. anyone who owns property or resides in the area of jurisdiction of this Ordinance, or the agent of such person, except as provided in 3, below.

15.2.3 Map Amendment:

1. the City Council;
2. the Planning and Zoning Board;
3. the City Manager or Planning Director; or
4. anyone who owns property or resides in the area of jurisdiction of this Ordinance or the agent of such person, except as provided in 3 below. Provided, however, map amendments involving Conditional Zoning Districts may only be initiated by the owner or authorized agent of the owner.

15.2.4 Down-Zoning

1. No amendment to zoning regulations or a zoning map that down-zones property shall be initiated nor is it enforceable without the written consent of all property owners whose property is the subject of the down-zoning amendment, unless the down-zoning amendment is initiated by the City (inclusive of the City's administrative staff, Planning and Zoning Board, and City Council). For purposes of this section, "down-zoning" means a zoning amendment that affects an area of land in one of the following ways:
 - a. By decreasing the development density of the land to be less dense than is allowed in the current district.
 - b. By reducing the permitted uses of the land that are permitted to fewer uses than are allowed in the current district.

15.2.5 Submittal

All applications for amendments to this Ordinance shall be in writing, signed, and filed with the Zoning Administrator.

The Zoning Administrator, before scheduling any application for amendment for consideration by the Planning and Zoning Board, shall ensure that it contains all the required information as specified in this Ordinance and on the application form. Applications which are not complete or otherwise do not comply with the provisions of this Ordinance shall not be scheduled by the Zoning Administrator, but shall be returned to the applicant with a notation of the deficiencies in the application. Completed applications shall be received a minimum of 45 days prior to the Planning and Zoning Board meeting at which the proposed amendment is scheduled to be considered.

All applications for amendment shall contain, as a minimum, a description of the proposed change, and if it would require a change of the zoning maps, the application shall include a map drawn to scale showing the land covered by the proposed amendment, a legal description of the property, and a list of names and addresses of all owners of property involved in the map change and all adjoining property owners as shown on County tax records.

Any application requesting a change to a Conditional Zoning District shall be accompanied by a site plan showing the use or uses proposed and any written conditions being proposed by the applicant.

15.2.6 Planning and Zoning Board Action

The Zoning Administrator shall present any properly completed application for amendment to the Planning and Zoning Board at its next regularly scheduled meeting occurring at least 45 days after filing of such application with the Zoning Administrator. Public notice shall be given in accordance with Planning and Zoning Board Rules of Procedure.

A Planning Board member shall not vote on any decision required by this Ordinance where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member.

The Planning and Zoning Board shall either recommend in favor of an amendment or in opposition to an amendment by simple majority vote of those present and voting. The Board may also propose conditions to their recommendation. A tie vote on a proposal shall be considered to be in opposition to such amendment. If the Planning and Zoning Board should fail to act on any proposed amendment within 45 days after it is presented to the Board, such failure to act shall be considered to be a favorable recommendation for the purposes of this procedure.

The Planning and Zoning Board shall advise and comment on whether the proposed amendment is consistent with any comprehensive plan that has been adopted and any other officially adopted plan that is applicable. The Planning and Zoning Board shall provide a written recommendation to the City Council that addresses plan consistency and other matters as deemed appropriate by the Planning and Zoning Board, but a comment by the Planning and Zoning Board that a proposed amendment is inconsistent with the comprehensive plan shall not preclude consideration or approval of the proposed amendment by the City Council.

15.2.7 City Council Action

The Zoning Administrator shall present any proposed amendments to the City Council at its next regular scheduled meeting, following Planning and Zoning Board action, at which it hears rezoning proposals. The Zoning Administrator shall transmit to the City Council the Planning and Zoning Board's record of action on the proposed amendments.

The City Council shall take such lawful action on such proposals as it may deem advisable provided that no zoning amendment shall be adopted until after a public hearing shall have been held. Notice of public hearing shall be given as required by North Carolina General Statute 160D-601 and 160D-602, as applicable.

A City Council member shall not vote on any decision required by this Ordinance where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member.

Prior to adopting or rejecting any Zoning Map or text amendment, the City Council shall adopt a statement describing whether its action is consistent with an adopted comprehensive plan and explaining why the City Council considers the action taken to be reasonable and in the public interest.

15.2.8 Special Provisions for Conditional Zoning Districts

Proposals for rezoning to any Conditional Zoning District shall be accompanied by a site plan and written conditions proposed by the applicant, except that a site plan shall not be required for any conditional district in which the only alteration of the standards of the parallel base zoning district with which it is associated are related to the uses permitted in the conditional district. Such proposals and requests shall be processed and considered in the same procedure as conventional rezoning proposals, except as otherwise set forth herein, and the voting shall be the same as that required for zoning matters.

If the City Council should determine that the property involved in the proposal should be rezoned, it shall adopt an Ordinance rezoning the. Otherwise the proposal shall be denied.

Specific conditions may be proposed by the petitioner or the City Council, but only those conditions mutually approved by the City and the petitioner (in writing) may be incorporated into the ordinance approving the amendment. Conditions and site-specific standards imposed in a Conditional Zoning District shall be limited to those that address the conformance of the development and use of the site to City ordinances and an officially adopted comprehensive or other plan and those that address the impacts reasonably expected to be generated by the development or use of the site.

The City Council may change or amend a previously approved Conditional Zoning District, after a public hearing upon recommendation by the Planning and Zoning Board and subject to the same consideration as provided for in this Section for the original consideration of the zoning map amendment.

No more than one proposal to amend or change a Conditional Zoning District shall be considered within 12 months of the date of the original approval of the CD rezoning or within 12 months of hearing of any previous proposal to amend or change any such Conditional District.

15.2.9 Maximum Number of Applications

No application for the same zoning district applicable to the same property or any part thereof shall be filed until the expiration of 1 year from:

1. the date of final determination by the City Council; or
2. the date of the public hearing or scheduled public hearing if the application is withdrawn after it has been advertised for public hearing.

Provided, further, in no case shall more than 2 rezoning applications, not counting any filed on behalf of the City, be filed for a given property or part thereof within any 12 month period.

Fees submitted for withdrawn cases shall not be refundable.

15.3 Special Uses

Permitting Special Uses adds flexibility to the Zoning Ordinance. Subject to high standards of planning and design, certain property uses are allowed in several districts where these uses would not otherwise be acceptable. By means of controls exercised through the Special Use Permit procedures, property uses that would otherwise be undesirable in certain districts can be developed to minimize any adverse effects they might have on surrounding properties.

The uses for which Special Use Permits are required are listed in Section 4.6, Table of Permitted and Special Uses and are shown with the letter “S” in the zoning district column opposite the use. Special Uses may be considered for approval by the City Council as provided for herein.

15.3.1 Special Use Permits Granted by the City Council

Special Use Permits may be granted by the City Council for uses listed in Section 4.6 in the district in which the use is proposed. Special Use Permit applications shall first be submitted to the Planning and Zoning Board for an informal review and recommendation prior to the City Council holding a quasi-judicial public hearing on the application.

1. Procedure.

- a.** The owner or owners of all property included in the petition for a Special Use Permit shall submit an application to the Zoning Administrator. Once the application is deemed to be complete, as evidenced by the submission of all required documentation and approval by the Technical Review Committee, the application shall be placed on the agenda of the next Planning and Zoning Board agenda with sufficient time to advertise the meeting, as required herein.
- b.** The Special Use Permit application will be reviewed by the Planning and Zoning Board, which shall give notice of a public hearing on the application. Notice of the hearing shall be given by posted, mailed, and published notice in the same manner as required by statute for zoning map and text amendments. At the public hearing, all interested persons shall be permitted to speak on the application.
- c.** The Planning and Zoning Board shall review the application and forward an informal recommendation to the City Council within 45 days after the meeting at which the public hearing is held on the application. In making its recommendation, the Planning and Zoning Board shall consider the findings and conclusions as set forth in 2 below.
- d.** The City Council shall hold a quasi-judicial public hearing after providing notice as required by statute, and shall grant or deny the Special Use Permit following the conclusion of the quasi-judicial public hearing. No application for a Special Use Permit shall be considered at the same City Council meeting at which the Council is considering a zoning map amendment petition for the same property.
- e.** When holding a quasi-judicial hearing for a Special Use Permit, members of the City Council shall not participate in or vote on any matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible

violations of due process include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter.

2. Findings and Conclusions.

The Special Use Permit, if granted, shall include preliminary approval of such plans as may be required. In granting the permit, the City Council shall affirmatively find:

- a.** that the use will not materially endanger public health or safety if located where proposed and developed according to the plan submitted;
- b.** that the use meets all required conditions and specifications of the Zoning Ordinance and all other applicable local, state, and federal rules and regulations;
- c.** that the character of the use, if developed according to the plan as submitted and/or further conditioned will be in harmony with the area in which it is to be located, and will be in general conformity with the City's Comprehensive Plan.

If such findings cannot be affirmed, then the City Council shall deny approval of the application.

3. Conditions.

- a.** In granting a Special Use Permit, the City Council may impose such additional restrictions and requirements as it may deem necessary in order that the purpose and intent of this Ordinance are served, public welfare secured, and substantial justice done. If the applicant does not accept, in writing, one or more conditions imposed as part of the Council's proposal to condition its approval of the Special Use Permit, the Council may alter its conditions, provided that the previously stated findings can be affirmed, or it may deny the application if such condition or conditions are necessary to affirm the required findings.

4. Limitation on Amendments.

- a.** Except where the City Council is considering revocation, no more than 1 proposal to amend or change any Special Use Permit shall be considered within 12 months of the date of the original authorization of such Permit or within 12 months of hearing of any previous proposal to amend or change any such Permit.

5. Subsequent Permits.

If an application for a Special Use Permit is granted, the applicant shall be required to apply for and receive any additional permits, such as zoning, stormwater, driveway, etc. that may be required by this Ordinance or other federal, state or local laws or regulations prior to commencing the use or development of the site for which the Special Use Permit was granted.

15.3.2 Termination and Abandonment of Special Use Permits

- 1.** A Special Use Permit shall remain vested for a period of two years. A right, which has been vested, shall be terminated at the end of the two-year vesting period with respect to buildings and uses for which no valid Building Permit applications have been filed.
- 2.** Abandonment of a Special Use: If any Special Use is discontinued for a period exceeding 18 months, it shall be deemed abandoned and the Special Use Permit shall be null and void and of no effect.
- 3.** Replacement of a Special Use by a Permitted Use by Right: If any Special Use is replaced by a use otherwise permitted in the zoning district, it shall be deemed abandoned and the Special Use Permit shall be null and void and of no effect.