

Article XIV AMENDMENT PROCEDURES; CONDITIONAL USE DISTRICTS (CUD) AND CONDITIONAL DISTRICTS (CD)

14.1 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 Use District or Conditional District shall be prohibited from offering any testimony or evidence concerning the specific manner in which he intends to use or develop the property. If the applicant believes that the development of his 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 shall apply for rezoning to the appropriate Conditional Use District and simultaneously apply for a Conditional Use Permit specifying the nature of his proposed development or he may apply for rezoning to a Conditional District and specify the nature of his proposed development. No permit shall be issued for any development within a Conditional Use District except in accordance with an approved Conditional Use Permit. No permit shall be issued for any development within a Conditional District except in accordance with an approved Conditional District application and City Council decision.

NO COMMITMENT PRIOR TO PUBLIC HEARING.

The Mayor, members of City Council, and members of the Planning and Zoning Board shall make no commitment or agreement or enter into any understanding of any zoning issues through the petition process within the town limits or its extraterritorial jurisdiction until the conclusion of the public hearing on the petition to rezone or amend the zoning map ordinance.

The following general process applies to both the conditional district and the parallel conditional use district. For simplicity the term conditional district will be used in this section to refer to both of these types of district unless otherwise noted.

(A) Application. Zoning petitions to establish a conditional district must be submitted to the Planning Board and will be process in accordance with the provisions of this section as well as the provisions of the general statutes. A conditional district classification will be considered only if the application is made by the owner of the property or his/her authorized agent. All applications must include a schematic plan drawn to scale and supporting text which will become a part of the ordinance amendment. The applicant should include at least the items listed below.

(1) A boundary survey showing the total acreage, present zoning classification, date and north arrow.

(2) The owners' names, addresses, and the tax parcel numbers of all adjoining properties.

(3) All existing easements, reservations, rights-of-way, and all yards required for zoning district requested.

(4) Proposed use of land and structures. For residential uses this should include the number of units and an outline of area where the structure will be located. For nonresidential uses, this should include the approximate square footage of all structures and an outline of the area where the structures will be located.

(5) Traffic, parking, and circulation plans, showing the proposed locations and arrangement of parking spaces and access points to adjacent streets.

(6) A rudimentary schematic drawing (with supporting text) of utility services and storm water facilities containing sufficient information to document ability to comply with state regulations, local regulations and local standards and practices.

(B) Additional requirements. When dealing with the conditional district process, it may be desirable to request additional information in order to evaluate a proposed use and its relationship to the surrounding area. Therefore, the Planning and Zoning Board and/or City Council may request additional information as they deem necessary. This information may include but is not limited to the items listed below.

(1) Proposed screening/buffering, including walls, fences, or planting areas as well as treatment on any existing natural features.

(2) Delineation of areas within the regulatory flood plain as shown on official Flood Hazard Boundary maps for the area.

(3) Existing and proposed topography at intervals in five foot contour intervals or less.

(4) Generalized information on the number, height, and size or, in especially critical situations, the location of structures.

(5) Proposed number and location of signs.

(6) Approximated completion time of the project and proposed phasing, if any.

(C) Review and Approval.

(1) In considering an application for the establishment of conditional use districts (CUD) and conditional districts (CD), the City Council and Planning and Zoning Board may ask for and the applicant may amend the application to attach reasonable and appropriate conditions to the location, nature, and extent of the proposed use. Any 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, and other matters that the Board or Council may find appropriate or the petitioner may propose. The conditions may not include architectural review or controls although the applicant may include architectural elements or sufficient information to show compliance with overlay district districts. The petitioner will have a reasonable opportunity to consider and respond to any such discussions and requests for additional conditions prior to final action by City Council.

(2) In the review and approval of a parallel conditional use district (CUD), emphasis will be given to an evaluation of the characteristics of the specific use proposed in relationship to surrounding properties and compliance with the City's comprehensive plan (including its land use plan).

- 1) In evaluating an application for the establishment of a conditional district, it is appropriate for City Council to consider the following:
 - a) The policies and objectives of the City's comprehensive plan including land use plans, particularly in relation to the proposed site and surrounding area.
 - b) The potential adverse impacts on the surrounding area, especially in regard but not limited to traffic, storm drainage, land values and compatibility of land use activities.
- 2) In the review and approval of a parallel conditional use district, emphasis will be given to an evaluation of the characteristics of the specific use proposed in relationship to surrounding properties and compliance with the City's comprehensive plan (including its land use plan).

14.2 Amendment Initiation

Applications to change, supplement or amend this Ordinance may be initiated by:

- 1) Textural Amendment.
 - a) The City Council;
 - b) The Planning and Zoning Board;
 - c) Anyone who owns property or reside in the area of jurisdiction of this Ordinance or the agent or such person.
- 2) Map Amendment.
 - a) The City Council;
 - b) The Planning and Zoning Board;
 - c) Anyone who owns property or has documented financial interest or the agent of such person. Provided, however, map amendments involving Conditional Use Districts or Conditional Districts may only be initiated by the owner or authorized agent of the owner.

14.3 Submittal

All applications for amendments to this Ordinance shall be on a form provided by the Planning Department, in writing, signed and filed with the Planning Department.

The Planning Department, before scheduling any amendment on the application for consideration by the Planning Commission, 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 Planning Department, but shall be returned to the applicant with a notation of the deficiencies in the application.

Completed applications shall be received a minimum of fourteen (14) days prior to the Planning and Zoning Board meeting at which the proposed amendment is scheduled to be considered.

All applications for amendments 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 a scale on not less than four hundred (400) feet to the inch and not more than twenty (20) feet to the inch showing the land covered by the proposed amendment.

Any application requesting a change to a Conditional Use District (CUD) shall be accompanied by a Conditional Use Permit application showing the use or uses proposed and any conditions being proposed by the applicant.

Any application requesting a change to a Conditional District (CD) shall be accompanied by a comprehensive proposal showing the use or uses proposed and any conditions being proposed by the applicant.

14.4 Planning and Zoning Board Action

The Director of Planning shall present any properly completed application for amendment to the Planning and Zoning Board at its next regularly scheduled meeting occurring at least fourteen (14) days after filing of such application with the Planning Department. The Planning and Zoning Board shall hold a public hearing on the proposed amendment. Notice of the public hearing shall be given in accordance with the Board's rules.

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 proposal amendment within forty five (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.

14.5 City Council Action

The Planning Director shall present any proposed amendments to the City Council at its next regular scheduled meeting at which it hears rezoning proposals. The Planning Director 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 the public hearing shall be given once a week for two (2) successive calendar weeks in a newspaper having general circulation in the area. The notice shall be published the first time not less than ten (10) days and not more than twenty-five (25) days before the date fixed for the hearing.

In addition, whenever there is a zoning map amendment involving a parcel of land, the owner of that parcel of land as shown on the county tax listing, and the owners of all parcels of land abutting that parcel of land as shown on the county tax listing, shall be emailed a notice of a public hearing on the proposal amendment by first class mail at the last addresses listed for such owners on the county tax abstracts.

This notice must be deposited in the mail at least 10 days but not more than 25 days prior to the public hearing. The person or persons mailing such notices shall certify to the City Council that fact, and such certificate shall be deemed conclusive in the absence of fraud. Additionally, a sign shall be placed on the parcel of land notifying the public of the time, date and location of the public hearing.

The first class mail notice required in this subsection 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, and the city elects to use the expanded published notice provided for in this subsection. In this instance the city may elect to either make the mailed notice provided for in this subsection or may as an alternative elect 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 explains the nature of the proposed change.

The final two advertisements shall comply with and be deemed to satisfy the provisions of G.S. 160A-364. The advertisement shall only be effective for property owners who reside in the area of general circulation of the newspaper which publishes the notice. Property owners who reside 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 first class mail pursuant to this section. 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 on or immediately adjacent to the subject area reasonably calculated to give public notice of the proposed rezoning.

14.6 Protest Petition

§160A.385.Changes

(a) Citizen Comments –

(1) 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 a Zoning Ordinance to the secretary to the board at least two business days prior to the proposed vote on such change, the secretary to the board shall deliver such written statement to the City Council. If the proposed change is the subject of a quasi-judicial proceeding under G.S. 160A-388, the secretary 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 board shall not disqualify any member of the board from voting.

14.7 Special Provision for Conditional Use Districts (CUD – Conditional Use Permits and Conditional Districts (CD) – Conditions

Proposals for rezoning to any Conditional Use District shall always be accompanied by a request for a Conditional Use Permit. 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.

Any proposal for Conditional Use District rezoning and its accompanying request for a Conditional Use Permit shall be heard and considered simultaneously. If the City Council should determine that the property involved in the proposal should be rezoned and the Conditional Use Permit issued, it shall adopt an Ordinance rezoning the property and authorizing the issuance of the Conditional Use Permit. Otherwise the proposal shall be denied.

In granting a Conditional Use Permit, the City Council shall make the following affirmative findings:

- (1) That the use requested is eligible for a Conditional Use Permit in the Zoning District as set forth in Section 6.15 (2). The authorization of a Conditional Use Permit for any use which is permitted only as a Conditional Use in the Zoning District which corresponds to the Conditional Use District shall preclude any requirement for obtaining a Conditional Use Permit for any such use from the Board of Adjustment.
- (2) That the Conditional Use will not materially endanger the public health or safety if located where proposed and developed according to the plan as proposed.
- (3) That the Conditional Use meets all required conditions and specifications: and,
- (4) That the location and character of the Conditional Use if developed according to the plan as proposed will be in harmony with the area in which it is to be located and in general conformity with the plan of development of the City and its environs.

In granting a Conditional Use Permit, the City Council may impose such additional restrictions and requirements upon such Permit 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 all requirements and conditions are accepted by the applicant, the City Council shall authorize the issuance of the Conditional Use Permit, otherwise the Permit shall be denied.

Any Conditional Use Permit so authorized shall be perpetually binding upon the property included in Such Permit unless subsequently changed or amended by City Council, as provided for in this Article.

The City Council may change or amend any Conditional Use Permit, 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 issuance of a Conditional Use Permit

No proposal to amend or change any Conditional Use Permit shall be considered within twelve (12) months of the date of the original authorization of such Permit or within twelve (12) months of hearing of any previous proposal to amend or change any such Permit.

Notwithstanding the quasi-judicial process used in this section for a Conditional Use District Conditional Use Permit the City Council may consider actions legislative in nature for Conditional District requests. Such action, although it may refer to conditions accepted by the applicant, is not from anybody acting as a quasi-judicial body and relying upon findings of fact.

To insure adequate public disclosure and public discussion a record to support the conditions (eventually attached to the Conditional District approval action) which result from the dialogue between the applicants, the public and the city officials shall be provided by the applicant and shall include the following:

- 1) Minutes of the required open meeting held by the applicant for the public and interested parties desiring to discuss the project. This is not part of the public hearing meetings held by the Planning and Zoning Board and City Council.
- 2) A record of the meeting notification process including the notification letter and list of who it was distributed to including property owners who are within two hundred feet (minus public right-of-ways).
- 3) Documents showing what uses and arrangement of uses was proposed by the applicant and discussed at the meeting including handouts, displays, renderings and pictures.

Submittal to and acceptance by the Planning Department is necessary for the application to be considered at both Planning and Zoning Board and City Council public hearings.

14.8 Maximum Number of Applications

No rezoning application applicable to the same parcel or any part thereof may be filed or accepted by the Planning Department, nor will be reviewed or considered by Planning Board or City Council until the expiration of six (6) months from:

- 1) The date of final determination by legislative action (vote) by city council; or
- 2) The date of the scheduled public hearing; which is the first meeting date at which City Council recessed for the public hearing or the scheduled public hearing date if the application has been advertised for public hearing.

Notwithstanding the above, City Council may consider a rezoning application for the same parcel at any time if a city agency initiates an application because of extraordinary circumstances or if the applicant initiates a conditional use rezoning or conditional district rezoning application because of extraordinary circumstances.

Fees submitted for withdrawn cases shall not be refundable once the proposal has been advertised.