

**ARTICLE XI: AMENDMENTS****DIVISION 130 AMENDMENTS****Section 130.01 Amendments In General**

The Board of Commissioners 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 shall be prohibited from offering any testimony or evidence concerning the specific manner in which he/she intends to use or develop the property. The Board of Commissioners and Board of Planning and Adjustment shall not consider any representation made by the applicant as to how the property will be used. Each Board shall only consider the entire possible range of uses permitted within the requested zoning classification.

**Section 130.02 Initiation of Amendments**

- A. The Board of Commissioners, Board of Planning and Adjustment, or Town Administration may request an amendment to this Ordinance. An appropriate ordinance amendment shall be drafted and presented to the Board of Planning and Adjustment for review and recommendation to the Board of Commissioners.
- B. Any person or organization may petition the Board of Commissioners to amend this Ordinance. The request shall be filed with the Zoning Administrator in the form of an application (along with an administrative fee as established by the Board of Commissioners) as provided by the Town, and shall include, at least the following 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.
- C. Petitions for amendments shall be submitted to the Zoning Administrator at least twenty-five (25) days prior to the date of the Board of Planning and Adjustment meeting at which the petition will be reviewed. Upon receipt of a properly completed application or amendment request, the Zoning Administrator shall submit the request to the Board of Planning and Adjustment for review and recommendation to the Board of Commissioners.

**Section 130.03 Board of Planning and Adjustment Review and Recommendation**

- A. Upon receipt of a petition for an amendment, the Zoning Administrator shall forward the request to the Board of Planning and Adjustment for its consideration.
- B. The Board of Planning and Adjustment shall review the proposed amendment, along with Zoning Administrator recommendations and any comments received from applicable reviewing departments and agencies.
- C. A statement analyzing the reasonableness of the proposed rezoning shall be prepared for each petition for a rezoning to a special or conditional use district, or a conditional district, or other small-scale rezoning.
- D.

Plan Consistency – Board of Planning and Adjustment. When conducting a review of proposed zoning text or map amendments pursuant to this Article, the Board of Planning and Adjustment shall advise and comment on whether the proposed action is consistent with any comprehensive plan that has been adopted and any other officially adopted plan that is applicable. The Board of Planning and Adjustment shall provide a written recommendation to the Board of Commissioners that addresses plan consistency and other matters as deemed appropriate by the Board of Planning and Adjustment, but a comment by the Board of Planning and Adjustment that a proposed amendment is inconsistent with the comprehensive plan shall not preclude consideration or approval of the proposed amendment by the Board of Commissioners. If a zoning map amendment qualifies as a "large-scale rezoning" under G.S. 160D-602(b), the Board of Planning and Adjustment statement describing plan consistency may address the overall rezoning and describe how the analysis and policies in the relevant adopted plans were considered in the recommendation made. The Board of Planning and Adjustment shall either recommend in favor of an amendment or in opposition to said amendment by simple majority vote of those present and voting. The Board of Planning and Adjustment may also propose conditions to their recommendation. A tie vote on a proposal shall be considered to be in opposition to such amendment.

- E. The Board of Planning and Adjustment shall have thirty (30) days from the initial consideration within which to submit its recommendation. Due to circumstances where additional information or time for review is required, the Board of Commissioners, upon written request (including an estimate of the additional time required) from the Board of Planning and Adjustment, may grant the Board of Planning and Adjustment additional time for consideration.

**Section 130.04 Board of Commissioners Review and Adoption**

- A. Upon receipt of a recommendation from the Board of Planning and Adjustment, the Zoning Administrator shall present any proposed amendments to the Board of Commissioners at its next regular scheduled meeting, following Board of Planning and Adjustment action.

The Zoning Administrator shall transmit to the Board of Commissioners the Board of Planning and Adjustment's record of action and written comment(s) on the proposed amendment. A comment by the Board of Planning and Adjustment that a proposed amendment is inconsistent with the comprehensive plan shall not preclude consideration or approval of the proposed amendment by the Board of Commissioners.

- B. The public notice required for the legislative hearing shall be in accordance with Section 130.05. The Board of Commissioners shall decide whether or not to schedule a legislative hearing on the proposed amendment based on the Board of Planning and Adjustment's recommendation and the Board of Commissioners' consideration. If the Board of Commissioners refuses to schedule a legislative hearing the amendment application/petition is summarily denied. If the Board of Commissioners agrees to schedule a legislative hearing, the public notice required for the legislative hearing shall be in accordance with Section 130.05.
- C. At the conclusion of a legislative hearing on the proposed amendment, the Board of Commissioners 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. When adopting or rejecting any zoning text or map amendment, the Board of Commissioners shall approve a brief statement describing whether its action is consistent or inconsistent with an adopted comprehensive plan. The requirement for a plan consistency statement may also be met by a clear indication in the minutes of the Board of Commissioners that at the time of action on the amendment the Board of Commissioners was aware of and considered the Board of Planning and Adjustment's recommendations and any relevant portions of an adopted comprehensive plan. If a zoning map amendment is adopted and the action was deemed inconsistent with the adopted plan, the zoning amendment shall have the effect of also amending any future land-use map in the approved plan, and no additional request or application for a plan amendment shall be required. A plan amendment and a zoning amendment may be considered concurrently. The plan consistency statement is not subject to judicial review. If a zoning map amendment qualifies as a "large-scale rezoning" under G.S. 160D-602(b), the Board of Commissioner's statement describing plan consistency may address the overall rezoning and describe how the analysis and policies in the relevant adopted plans were considered in the action taken.
- D. Statement of Reasonableness - When adopting or rejecting any petition for a zoning map amendment, a statement analyzing the reasonableness of the proposed rezoning shall be approved by the Board of Commissioners. This statement of reasonableness may consider, among other factors, (i) the size, physical conditions, and other attributes of the area proposed to be rezoned, (ii) the benefits and detriments to the landowners, the neighbors, and the surrounding community, (iii) the relationship between the current actual and permissible development on the tract and adjoining areas and the development that would be permissible under the proposed amendment; (iv) why the action taken is in the public interest; and (v) any changed conditions warranting the amendment. If a zoning map amendment qualifies as a "large-scale rezoning" under G.S. 160D 602(b), the Board of Commissioners' statement on reasonableness may address the overall rezoning.
- E. Single Statement Permissible. - The statement of reasonableness and the plan consistency statement required by this section may be approved as a single statement.

- F. If the Board of Planning and Adjustment has not provided a recommendation within the timeframe specified in Section 130.03, the Board of Commissioners need not await the recommendation of the Board of Planning and Adjustment before taking action on a proposed amendment nor is the Board of Commissioners bound by any recommendations of the Board of Planning and Adjustment presented to it at the time it takes action on a proposed amendment.
- G. The Board of Commissioners 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.
- H. Voting on amendments to this Article shall proceed in the same manner as other ordinances. In the case of a protest petition for a change to the Zoning Map, the number of favorable votes by the Board of Commissioners will be in accordance to Section 130.07.
- I. Decisions by the Board of Commissioners on amendment requests shall be in writing and filed in the offices of the Zoning Administrator and Town Clerk.

### **Section 130.05 Legislative Hearing Requirements**

- A. No proposed amendment that amends any of the provisions of this Ordinance may be adopted until a legislative hearing has been held on such amendment.
- B. The Clerk to the Board shall publish a notice of the legislative hearing on any amendment to the provisions of this Ordinance once a week for two successive weeks in a newspaper having general circulation in the Town. The notice shall be published for the first time not less than ten (10) days and not more than twenty-five (25) days before the date fixed for the legislative hearing. In computing this period, the date of publication shall not be counted but the date of the legislative hearing shall be.
- C. With respect to map amendments, the Zoning Administrator shall provide first-class mail notice of the legislative hearing to the owners of record for tax purposes of all properties whose zoning classification is changed by the proposed amendment as well as the owners of all properties within 600 feet of the property rezoned by the amendment. The Zoning Administrator may take any other action deemed to be useful or appropriate to give notice of the legislative hearing.
- D. The notice required in Subsection C above will 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 town may elect, in lieu of the mailed notice specified in Subsection C, to publish the expanded published notice provided for in this subsection. In this instance, the town may elect to either make the mailed notice or may as an alternative elect to publish notice of the hearing once a week for two successive calendar weeks in a newspaper having general circulation in the area an advertisement of the legislative 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 notice shall be published for the first time not less than ten (10) days and not more than twenty-five (25) days before the date fixed for the legislative hearing. The advertisements shall comply with and be deemed to satisfy the provisions of North Carolina General Statutes 160D. The advertisement shall not be less than one-half of a newspaper page in size. Property owners who reside outside the town'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 North Carolina General Statutes 160D (b). The person or persons mailing the notices shall certify to the Board of Commissioners that fact, and the certificates shall be deemed conclusive in the absence of fraud.

- E. The notice required or authorized by this Section shall:
1. State the date, time, and place of the legislative 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 Clerk to the Board;
  5. State that substantial changes in the proposed amendment may be made following the legislative hearing; and
- F. The person or persons mailing notices to adjoining property owners, as defined in Subsection C and/or D above, shall certify to the Board of Commissioners that fact.

- G. The Zoning Administrator shall make every reasonable effort to comply with the notice provisions set forth in this section. However, it is the Council's intention that no failure to comply with any of the notice provisions (except those required by the North Carolina General Statutes.) shall render any amendment invalid.

### **Section 130.06 Ultimate Issue Before Board of Commissioners on Amendments**

In deciding whether to adopt a proposed amendment to this Ordinance, the central issue before the Board of Commissioners is whether the proposed amendment advances the public health, safety or welfare of the community. All other issues are irrelevant, and all information related to other issues at the legislative hearing may be declared irrelevant by the presiding officer and excluded from consideration. When considering proposed map amendments:

- A. The Board of Commissioners 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 Board of Commissioners 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 Board of Commissioners 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.

### **Section 130.07 Withdrawal of Amendment Petition**

The petitioner shall have the right to withdraw, in writing, an amendment petition/application at any time prior to a final decision by the Board of Commissioners. However, petitions that have been withdrawn shall be reconsidered only as a new petition and shall adhere to the submission and review requirements of this Division. Fees for withdrawn cases shall not be refundable.

### **Section 130.08 Petition Re-submittal**

If an amendment petition is denied by the Board of Commissioners, the Zoning Administrator shall not accept a rezoning petition similar to that denied for the same property or a portion of the property within one year of the Board's action, except that the Zoning Administrator may accept for submission to the Board of Planning and Adjustment a new rezoning petition within the one-year period if the Zoning Administrator determines that:

- A. There has been a significant change in the zoning district classification of an adjacent property(ies);
- B. A new or updated land use plan that changes public policy regarding the property or its neighborhood is adopted by the town;
- C. Public facilities such as roads, water lines, sewer lines, or other infrastructure are constructed or expanded to serve the property and enable the proposed development to be

accommodated; or

- D. There has been some other significant change, other than a change in ownership of the property, which might justify waiving the one-year restriction on submitting a new petition.

**Section 130.09 Notification of Decision**

Within five working days of any action by the Board of Commissioners on an amendment petition/application, 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.