

## **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 Planning Board 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, Planning Board, Board of Adjustment, or Town Administration may request an amendment to this Ordinance. An appropriate ordinance amendment shall be drafted and presented to the Planning Board 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 Planning Board 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 Planning Board for review and recommendation to the Board of Commissioners.

**Section 130.03 Planning Board Review and Recommendation**

- A. Upon receipt of a petition for an amendment, the Zoning Administrator shall forward the request to the Planning Board for its consideration.
- B. The Planning Board shall review the proposed amendment, along with Zoning Administrator recommendations and any comments received from applicable reviewing departments and agencies, and submit its recommendation to the Board of Commissioners. The Planning Board 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 may also propose conditions to their recommendation. A tie vote on a proposal shall be considered to be in opposition to such amendment.
- C. The Planning Board shall have sixty (60) 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 Planning Board, may grant the Planning Board additional time for consideration. Failure of the Planning Board to submit its recommendation within this time period shall constitute a favorable recommendation.

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

- A. Upon receipt of a recommendation from the Planning Board, the Zoning Administrator shall present any proposed amendments to the Board of Commissioners at its next regular scheduled meeting, following Planning Board action. The Zoning Administrator shall transmit to the Board of Commissioners the Planning Board's record of action on the proposed amendment.
- B. The public notice required for the public hearing shall be in accordance with Section 130.05. The Board of Commissioners shall decide whether or not to schedule a public hearing on the proposed amendment based on the Planning Board's recommendation and the Board of Commissioners' consideration. If Board of Commissioners refuse to schedule a public hearing the amendment application/petition is summarily denied. If the Board of Commissioners agrees to schedule a public hearing, the public notice required for the public hearing shall be in accordance with Section 130.05.
- C. At the conclusion of a public 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.
- D. If the Planning Board has not provided a recommendation within the timeframe specified in Section 130.03, the Board of Commissioners need not await the recommendation of the Planning Board before taking action on a proposed amendment nor is the Board of

Commissioners bound by any recommendations of the Planning Board presented to it at the time it takes action on a proposed amendment.

- E. 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.
- F. 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.
- G. Decisions by the Board of Commissioners on amendment requests shall be filed in the offices of the Zoning Administrator and Town Clerk.

### **Section 130.05 Public Hearing Requirements**

- A. No proposed amendment that amends any of the provisions of this Ordinance may be adopted until a public hearing has been held on such amendment.
- B. The Clerk to the Board shall publish a notice of the public 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 nor more than twenty-five (25) 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 Zoning Administrator shall provide first-class mail notice of the public 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 public 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 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 final two advertisements shall comply with and be deemed to satisfy the provisions of North Carolina General Statutes 160A-364. 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 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 160A-384 (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 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 Clerk to the Board;
  5. State that substantial changes in the proposed amendment may be made following the public 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 public 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 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 three-fourths of the membership of the Board of Commissioners.
- B. To invoke the three-fourths 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 road 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 Town Clerk in sufficient time to allow the town at least two normal working days, excluding Saturday, Sunday, and legal holidays, before the date established for a public hearing on the proposed amendment to determine the sufficiency and accuracy of the petition.
  4. Be on a form provided by the Town Clerk and contain all the information requested on this form.
- C. The foregoing provisions concerning protests 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.

**Section 130.08 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 130.09 Petition Resubmittal**

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 Planning Board 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 130.10 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.

#### **Section 130.11 Judicial Review**

The decisions regarding the adoption, amendment, and repeal of this Zoning Ordinance can be challenged in court by persons who have a specific personal interest or standing in the decision and whose legal interests are directly and adversely affected by the decision. Said challenge to a Zoning Ordinance decision must be filed within two months of the date of the decision as provided in North Carolina General Statutes 1-54.1.