

CHARLOTTE CODE

**PART 1: PROVISIONS OF GENERAL APPLICABILITY**

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**CHAPTER 6:**

**AMENDMENTS**

**PART 1: PROVISIONS OF GENERAL APPLICABILITY**

**Section 6.101. Purpose.**

The purpose of this Chapter is to provide a means for amending the text of these regulations and the classification of any parcel of land identified on the Official Zoning Maps. The purpose is not to relieve particular hardships, nor to confer special privileges or rights on any person, but only to make adjustments (i) necessary in light of changed conditions or changes in public policy, or (ii) likely to achieve the purposes of these regulations.

**Section 6.102. Authority.**

Upon compliance with the provisions of this Chapter, the City Council shall have the authority to amend or repeal the text of these regulations and the classification of any parcel of land, as indicated on the Official Zoning Maps.

**Section 6.103. Initiation.**

- (1) Any amendment, except for the reclassification of property to a conditional zoning district, may be initiated by the City Council on its own motion, or by any owner of a legal interest in the property, anyone else authorized in writing to act on the owner's behalf, or by any non-owner in accordance with the procedures set forth below.  
*(Petition No. 2012-020, § 6.103, (1) 05/14/2012)*
- (2) An amendment for the reclassification of property to a conditional zoning district may be initiated only by the owner of a legal interest in the affected property, any person having an interest in the property by reason of a written contract with owner, or an agent authorized in writing to act on the owner's behalf.

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- (3) When considering a petition for the reclassification of property to any district other than a conditional zoning district, the Planning Commission and the City Council shall not evaluate the petition based on any specific proposal for the use or development of the affected property and the petitioner shall refrain from using any graphic materials or descriptions of the proposed use or development except for those which would apply to any use permitted in the requested district.
- (4) A text amendment to these regulations may be initiated by any person.

#### **Section 6.104. Preliminary meeting with staff.**

Before filing a petition for the reclassification of property under Section 6.105, the petitioner shall meet with the Planning Department staff to discuss the nature of the proposed reclassification, the standards for development under the existing and proposed classifications, and concerns that persons residing in the vicinity of the property may have regarding the proposed reclassification, if known.

*(Petition No. 2012-020, § 6.104, 05/14/2012)*

#### **Section 6.105. Filing of petitions.**

- (1) A petition for reclassification of property or text amendment must be in a form prescribed by the Planning Department and accompanied by the fee established by the City Council, and shall be filed with the Planning Director.  
*(Petition No. 2012-020, § 6.105, 05/14/2012)*
- (2) No application for reclassification of property will be accepted until it is complete. A decision by the Planning Director or his or her designee that an application is incomplete may be appealed to the Planning Commission. A decision by the Planning Commission that an application is incomplete may be appealed to the City Council.

#### **Section 6.106. [RESERVED]**

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#### **Section 6.107. Staff review.**

- (1) The Planning Director shall review the proposed amendment.
- (2) The Planning Director shall deliver copies of the proposed amendment to other appropriate agencies including, but not limited to, Land Use and Environmental Services Agency (LUESA), Engineering and Property Management, Health Department, Mecklenburg County Parks and Recreation Department, Charlotte Department of Transportation, Charlotte Mecklenburg Utilities, Charlotte-Mecklenburg Schools and the Charlotte Fire Department.  
*(Petition No. 2005-78 §6.107(2),06/20/05)*
- (3) The Planning Director, based on the Planning Department staff's review of the proposed amendment and incorporating or summarizing the reports of other agencies, shall deliver to the Planning Commission and City Council, prior to the scheduled hearing, a written report and recommendation setting forth whether the amendment should be granted or denied and the reasons for such recommendation.  
*(Petition No. 2012-020, § 6.107, (3), 05/14/2012)*

#### **Section 6.108. Withdrawal and amendment of petition.**

- (1) The petitioner may withdraw a petition filed under Section 6.105 at any time prior to the day of the first publication of the public hearing notice as required under G.S. Section 160A-364. After that time, the petitioner may file a request to withdraw the petition with the Planning Director. The City Council shall decide, on the date scheduled for the hearing, whether to allow the withdrawal.  
*(Petition No. 2003-101 §6.108(1),11/17/03)*
- (2) It is generally not the intent of this Section to permit the withdrawal of petitions on or after the day of the first publication of the public hearing notice. However, the City Council may approve a request for withdrawal after this time period only if it decides that there are substantial circumstances favoring the withdrawal and that the withdrawal will not be detrimental to the interests of citizens affected by the petition. Withdrawal is a matter of discretion with the City Council and not a matter of right. The City Council will not permit the amendment, which would delete a portion of land originally included in the petition for rezoning when the effect of such deletion would be to change the percentage of voters required for the approval of the rezoning.

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A rezoning petition can be withdrawn, even if a protest petition has been filed or invoked against the rezoning petition, if the rezoning petition is withdrawn prior to the day of the first publication of the public hearing notice. A rezoning petition cannot be withdrawn on or after the day of the first publication of the public hearing notice, if a valid protest petition has been filed, unless the protest petition is itself validly withdrawn or by an order of a court.

*(Petition No. 2003-101 §6.108(2), 11/17/03)*

- (3) The petitioner shall not be allowed to amend the petition after a public hearing has been scheduled for the petition unless such an amendment to the petition is submitted to the Planning Director no later than four weeks prior to the scheduled public hearing. No changes to the petition shall be accepted in the intervening weeks prior to the hearing. Also, no changes to the petition shall be made at the hearing, although potential changes proposed by the petitioner, Planning Commission, City Council, and other interested parties may be considered by the City Council at the time of their hearing, if any changes are offered.
- (4) The Planning Commission, upon reviewing any proposed amendments after a public hearing, must first evaluate whether an amendment is substantial enough to require recommending another public hearing. The City Council may, at its discretion, schedule the amended petition for a new public hearing, preceded by the notice required in Section 6.109.
- (5) If the Planning Commission deems any proposed amendment to be a change but not requiring another public hearing of the petition, it may defer action on the petition for at least 30 days in order for staff and other interested parties to have the opportunity to review and comment on the amendment to the petition. After the deferral or new public hearing, the Planning Commission may then consider the amended petition and forward its recommendation to the City Council and other interested parties.

If the petitioner wishes to again amend the petition after the Planning Commission's recommendation and prior to a vote by the City Council, then prior to the time of the vote, the Council shall refer the petition as amended by the petitioner to the Planning Commission for additional review unless the City Council, by a three-fourths (3/4) vote of all members present except members properly excused from voting, determines that the nature of the modification is such that the Planning Commission review is not necessary.

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#### **Section 6.109. Notice of hearing.**

- (1) Notice of all public hearings required under this Chapter shall be in accordance with the North Carolina General Statutes and rules and procedures adopted by the City Council.
- (2) Notice of hearings for third party zoning map amendments.
  - a) For city-initiated zoning map amendments, the Planning Department staff shall provide notice of the proposed rezoning petition and notice of the public hearings to all property owners and adjacent owners, in accordance with the North Carolina General Statutes and rules and procedures adopted by the City Council.
  - b) Except for a city-initiated zoning map amendment, when a rezoning application is not filed by the owner of the subject parcel of land to which the proposed change would apply, the petitioner shall certify to the City Council that the property owner of the parcel of land as identified on the County tax listing has received actual notice of the proposed rezoning petition and a copy of the notice of public hearing, pursuant to G.S. 160A-384 as amended and G.S. 1A-1, Rule 4(j). A certification form shall be made available to the petitioner by the Planning Department.  
*(Petition No. 2011-004 §6.109, 02/21/11)*

#### **Section 6.110. Hearing.**

- (1) No amendment shall be adopted until after the City Council has held a public hearing on the proposed amendment.
- (2) The hearing shall be conducted in accordance with rules and procedures adopted by City Council.
- (3) No proposed amendment shall be approved until the Planning Commission has made its written recommendations, or 30 days after the public hearing, whichever shall first occur. If the Planning Commission does not make a recommendation within 30 days after the petition has been referred to it, then the Planning Commission shall be considered to have made a favorable recommendation, unless action was taken to defer.

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In making its written recommendation, the Planning Commission shall also advise and comment on whether the zoning petition is consistent with the purposes, goals, and objectives and policies of the adopted "Generalized Land Plan" and any amendment to that plan through an adopted district or area plan covering the subject property.

Per G.S. 41A-4 and G.S. 41-A-5(a), the Planning Commission, in making its written recommendation, shall not discriminate against affordable housing units for families or individuals with incomes below eighty percent (80%) of area median income. A written recommendation by the Planning Commission based on considerations of limiting high concentrations of affordable housing is permissible.

*(Petition No. 2006-16 §6.110(3), 03/20/06),*

*(Petition No. 2011-05 §6.110(3), 05/16/2011)*

#### **Section 6.111. Action by City Council.**

- (1) The City Council, after receiving the report and recommendation of the Planning Commission, shall consider the reports and recommendations of the Planning Commission, the Planning Department staff, and other departments. Within a reasonable time the City Council shall either reject the proposed amendment or adopt an ordinance enacting the proposed amendment with or without modifications.

*(Petition No. 2012-020, § 6.111, (1), 05/14/2012)*

- (2) In considering any petition to reclassify property, the City Council shall consider the following items:

*(Petition No. 2006-16 §6.111(2), 03/20/06)*

- (a) Whether the proposed reclassification is consistent with the purposes, goals, objectives, and policies of the adopted "Generalized Land Plan" and any amendment to that plan through an adopted district or area plan covering the subject property;

- (3) In considering any petition to reclassify property, the City Council may consider, although is not required to, the following:

*(Petition No. 2006-16 §6.111(3), 03/20/06)*

- (a) Whether the proposed reclassification is compatible with the overall character of existing development in the immediate vicinity of the subject property;

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- (b) The adequacy of public facilities and services intended to serve the subject property, including but not limited to roadways, parks and recreational facilities, police and fire protection, schools, stormwater drainage systems, water supplies, and wastewater treatment and garbage services; and
  - (c) Whether the proposed reclassification will adversely affect a known archaeological, environmental, historical, or cultural resource.
- (4) Per G.S. 41A-4 and G.S. 41-A-5(a), the City Council, in considering any petition to reclassify property, shall not discriminate against affordable housing units for families or individuals with incomes below eighty percent (80%) of area median income. Reclassification of property by the City Council based on considerations of limiting high concentrations of affordable housing is permissible.  
*(Petition No. 2011-05 §6.111(4), 05/16/2011)*
- (5) In approving an amendment to reclassify property to a district other than a conditional zoning district, or with the consent of the petitioner in the reclassification to a conditional zoning district, the City Council may change the existing classification of the property, or any part of the property covered by the petition, to the classification requested, to a classification or classifications between the existing and the requested classifications, or to any higher classification in the hierarchy of zoning districts established in Section 9.102. This action may occur without the withdrawal or modification of the petition or further public hearings. In the case where a petitioner requests a text amendment, the City Council may modify any proposed text amendment upon adoption of an ordinance enacting the amendment without the withdrawal or modification of the petition or further public hearings.  
*(Petition No. 2006-16 §6.111(4), 03/20/06)*
- (6) In approving a rezoning petition, the City Council shall adopt a statement describing whether its action is consistent with the purposes, goals, objectives, and policies of the adopted "Generalized Land Plan" and any amendment to that plan through an adopted district or area plan covering the subject property, and provide an explanation why the action taken is reasonable and in the public interest. This statement shall not be subject to judicial review.  
*(Petition No. 2006-16 §6.111(5), 03/20/06)*

#### **Section 6.112. Effect of denial of petition.**

- (1) A petition for the reclassification of property or amendments to the text of these regulations that has been denied in whole or in part, or approved to a classification other than the one originally requested, shall not be resubmitted within two years of the date of the City Council's action on the original petition, except as permitted in subsection (2) below. However, nothing in this subsection can be deemed to preclude seeking a lower classification in the hierarchy of zoning districts established in Section 9.102 than the district previously requested.

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Further, this Section shall not apply to rezoning petitions initiated by someone other than the property owner or authorized agent.

- (2) The City Council may allow resubmission of the petition within the two-year time frame if it determines that, since the date of action on the prior petition, one or more of the following guidelines have been met:
  - (a) There has been a similar or more intensive change in the zoning district classification of an adjacent property;
  - (b) The City Council has adopted a public policy plan, including area plan, district plan or transportation plan that changes public policy regarding how the property affected by the amendment should be developed.
  - (c) Construction or expansion of a road, water line, sewer line, or other infrastructure has occurred to serve the property and which infrastructure can accommodate the intensity of development allowed under the proposed classification; or
  - (d) There has been some other substantial change in conditions or circumstances which justifies waiver of the two-year restriction on a new petition; this shall not include a change in the ownership of the subject property or, in the case of a petition for reclassification to a conditional zoning district, a change in the scale or features of the development proposed in the prior petition.
- (3) The City Council shall receive a report from the Planning Department containing its recommendations on resubmission of the petition.  
*(Petition No. 2012-020, § 6.112, (3), 05/14/2012)*
- (4) Any petition allowed by the City Council under subsection (2) above must be reviewed and approved in accordance with the procedures and standards required under this chapter for the review of proposed amendments.



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#### **Section 6.113. Protest petitions.**

*(Petition No. 2009-15 §6.113(1, 2, 3) 04/20/09)*

- (1) In the event that the City Council receives a petition protesting any reclassification of property, and signed by the owners of either 20 percent or more, of the area included in the proposed change, or 5% or more of a 100-foot wide buffer extending along the entire boundary of each discrete or separate area proposed to be rezoned, the amendment shall become effective only upon an affirmative vote of three-fourths (3/4) of the members of the City Council, including the Mayor, who are not excused from voting. For the purposes of this subsection, vacant positions on the Council and members who are excused from voting shall not be considered “members of the Council” for calculation of the requisite supermajority.

Street right-of-ways shall not be considered in computing the 100-foot buffer area as long as that street right-of-way is 100 feet wide or less. When less than an entire parcel of land is subject to the proposed zoning map amendment, the 100-foot buffer shall be measured from the property line of that parcel. The protest petition shall be on the form prescribed by the City or on a document containing all of the information on the City’s form. All protest petitions shall include the following information to be considered complete:

- Name, address, daytime phone number of the person filing the protest petition with the City Clerk.
- Rezoning petition number.
- Statement of the reason for the protest petition.
- Legible printed name of property owner(s).
- Tax parcel identification number of the property included in the protest petition.
- Address of the property included in the protest petition.
- Daytime phone number of property owner(s) or authorized agent signing the protest petition.
- Signature of legal property owner(s) or authorized agent (indicate representative capacity) of the property included in the protest petition.
- Number of pages submitted.
- Clerk’s certification.

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- (2) No protest against any change or amendment to a zoning ordinance or zoning map shall be valid or effective for the purposes of G.S. § 160A-385, unless it 1) meets the requirements of subsection (1) of this section, and 2) has been received by the City Clerk in sufficient time to allow the City at least two normal work days, excluding Saturdays, Sundays and City of Charlotte legal holidays, before the date established for a public hearing on the proposed change or amendment to determine the sufficiency and accuracy of the petition. (For example, a petition must be filed by 5:00 p.m. on Wednesday for a hearing taking place the following Monday.)
- (3) Any property owner may withdraw their protest at any time prior to the Council's vote on the rezoning petition. Such a withdrawal deletes the subject properties from the computation pursuant to G.S. § 160A-385. In order to effectively withdraw signatures, the withdrawals must be in writing, identify the rezoning petition protested against, state that the submitted signatures have the purpose of deleting the signers from the protest petition, and be submitted to the City Clerk. Only those protest petitions that meet the qualifying standards set forth in G.S. 160A-385 at the time of the vote on the rezoning petition shall trigger the supermajority voting requirement. A withdrawn protest may not be reinstated after the deadline for filing protests set forth in subsection (2).

*(Petition No. 2006-16 §6.113(3), 03/20/06)*

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##### **Section 6.201. Purpose.**

Conditional zoning districts are zoning districts in which the development and use of the property is subject to predetermined ordinance standards and the rules, regulations, and conditions imposed as part of the legislative decision creating the district and applying it to the particular property. The following zoning district categories are conditional zoning districts: (*Petition No. 2011-018, § 6.201(1)(2)(3)(4),05/23/11*)

- (1) Parallel conditional zoning districts (A parallel conditional zoning district is a conditional zoning district in which the potential permitted use or uses are, except as limited by the conditions imposed on the district, of the same character or type as the use or uses permitted in a general district having a parallel designation or name.)
- (2) Conditional zoning districts identified in Chapter 11: Mixed Use Districts, Manufactured Housing Development, Commercial Center District, Neighborhood Services District, Hazardous Waste District, and Research 3 District.
- (3) Mixed Use Development District (Optional), Uptown Mixed Use District (Optional), and Transit Oriented Development (Optional) described in Chapter 9, Parts 8.5, 9, and 12 respectively, and RE-3 (Optional) described in Chapter 11, Part 7.
- (4) Pedestrian Overlay District (Optional) and Transit Supportive (Optional) described in Chapter 10 Parts 8 and 9 respectively.

A conditional zoning district allows particular uses to be established only in accordance with specific standards and conditions pertaining to each individual development project. Some land uses are of such a nature or scale that they have significant impacts on both the immediately surrounding area and on the entire community, which cannot be predetermined and controlled by general district standards. There are also circumstances in which a general district designation allowing such 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 these regulations, the adopted "Generalized Land Plan", and adopted district and area plans. The review process established in this Part provides for the accommodation of such uses by a reclassification of property into a conditional zoning district, subject to specific conditions, which ensure compatibility of the use with the use and enjoyment of neighboring properties. A conditional zoning district is generally not intended for securing early zoning for a proposal, except when that proposal is consistent with an approved district or area plan or the proposal can demonstrate that public infrastructure needed to serve the development will be made available in a reasonable time period.

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#### **Section 6.202. Plans and other information to accompany petition.**

- (1) Property may be rezoned to a conditional zoning district only in response to and consistent with a petition submitted by the owners of all of the property to be included in the district. A petition for conditional zoning must include a site plan, drawn to scale, and supporting information and text that specifies the actual use or uses intended for the property and any rules, regulations, and conditions that, in addition to all predetermined ordinance requirements, will govern the development and use of the property. The following information must be provided, if applicable:
  - (a) A boundary survey and vicinity map showing the property's total acreage, its zoning classification(s), the general location in relation to major streets, railroads, and/or waterways, the date, and north arrow;
  - (b) All existing easements, reservations, and rights-of-way;
  - (c) Areas in which structures will be located;
  - (d) Proposed use of all land and structures, including the number of residential units and the total square footage of any nonresidential development;
  - (e) All yards, buffers, screening, and landscaping required by these regulations or proposed by the petitioner;
  - (f) All existing and proposed points of access to public streets;
  - (g) Surface Water Improvement and Management ("SWIM") buffers and delineation of areas within the regulatory floodplain as shown on the Official Flood Hazard Boundary Maps for Mecklenburg County;
  - (h) Proposed phasing, if any;
  - (i) The location of existing and proposed storm drainage patterns and facilities intended to serve the proposed development;
  - (j) Generalized traffic, parking, and circulation plans; and
  - (k) Tree Survey, if one is required by Section 21-91 of the Tree Ordinance.  
*(Petition No. 2001-050, § 6.202(1), 06-18-01)*  
*(Petition No. 2010-060, § 6.202(1)(k), 10/18/10)*

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- (2) The Planning Director has the authority to waive any application requirement where the type of use or scale of proposal makes providing that information unnecessary or impractical.
- (3) In the course of evaluating the proposed use, the Planning Director, Planning Commission, or City Council may request additional information from the petitioner. This information may include the following:
  - (a) Proposed number and general location of all structures;
  - (b) Proposed screening, buffers and landscaping over and above that required by these regulations, as well as proposed treatment of any existing natural features;
  - (c) Existing and general proposed topography, if available, at four-foot contour intervals or less;
  - (d) The location of significant trees on the subject property;
  - (e) Scale of buildings relative to abutting property;
  - (f) Height of structures;
  - (g) Exterior features of proposed development;
  - (h) Any other information needed to demonstrate compliance with these regulations; and
  - (i) Proposed number and location of signs.
- (4) The site plan and any supporting text shall constitute part of the petition for all purposes under this Chapter.
- (5) The Planning Director or his or her designee may require the petitioner to submit more than one copy of the petition and site plan in order to have enough copies available to circulate to other government agencies for review and comment.

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#### **Section 6.203. Required community meeting before public hearing.**

Before a public hearing may be held on a petition for a conditional zoning district, the petitioner must file in the Office of the City Clerk a written report of at least one community meeting held by the petitioner. Notice of such a meeting shall be given to the property owners and organizations entitled to notice as determined by City policy. The report shall include, among other things, a listing of those persons and organizations contacted about the meeting and the manner and date of contact, the date, time and location of the meeting, a roster of the persons in attendance at the meeting, a summary of issues discussed at the meeting, and a description of any changes to the rezoning petition made by the petitioner as a result of the meeting. In the event the petitioner has not held at least one meeting pursuant to this subsection, the petitioner shall file a report documenting efforts that were made to arrange such a meeting and stating the reasons such a meeting was not held. The adequacy of a meeting held or report filed pursuant to this section shall be considered by the City Council but shall not be subject to judicial review.

#### **Section 6.204. Approval of conditional zoning district.**

Conditional zoning district decisions are a legislative process subject to judicial review using the same procedures and standard of review as apply to general use district zoning decisions. In considering any petition for a conditional zoning district, the Council shall act in accordance with Section 6.111, "Action by City Council." Conditional zoning district decisions shall be made in consideration of identified relevant adopted land use plans for the area, including, but not limited to, comprehensive plans, strategic plans, district plans, area plans, neighborhood plans, corridor plans, and other land-use policy documents.

The City Council may not vote to rezone property to a conditional zoning district during the time period beginning on the date of a municipal general election and concluding on the date immediately following the date on which the City Council holds its organizational meeting following a municipal general election unless no person spoke against the rezoning at the public hearing and no valid protest petition under G.S. 160A-386 was filed. If a valid protest petition under G.S. 160A-386 has been filed against a zoning petition which would otherwise have been scheduled for a public hearing during the period beginning on the first day of October prior to a municipal general election, but prior to the new City Council taking office, then the public hearing on such petition and any decision on such petition shall both be postponed until after the new City Council takes office.

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#### **Section 6.205. Conditions to approval of petition.**

In approving a petition for the reclassification of property to a conditional zoning district, the Planning Commission may recommend, and the City Council request, that reasonable and appropriate conditions be attached to approval of the petition. Conditions and site-specific standards 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. 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, storm water drainage, the provision of open space, and other matters that the City Council may find appropriate or the petitioner may propose. Such conditions to approval of the petition may include dedication to the City, County or State, as appropriate, 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. Only those conditions mutually approved by the Council and the petitioner may be incorporated into the petition.

*(Petition No. 2006-16 §6.205, 03/20/06)*

#### **Section 6.206. Effect of approval.**

- (1) If a petition for conditional zoning is approved, the development and use of the property shall be governed by the predetermined ordinance requirements applicable to the district's category, the approved site plan for the district, and any additional approved rules, regulations, and conditions, all of which shall constitute the zoning regulations for the approved district and are binding on the property as an amendment to these regulations and to the Zoning Maps.
- (2) If a petition is approved, the petitioner shall comply with all requirements established in Chapter 4 for obtaining a building permit and certificate of occupancy. Only those uses and structures indicated in the approved petition and site plan shall be allowed on the subject property. A change of location of the structures may be authorized pursuant to Section 6.207, Alterations to approval. The changes to the site plan layout will not increase the number of structures.  
*(Petition No. 2001-148, § 2.206(2), 2/18/02)*
- (3) Following the approval of the petition for a conditional zoning district, the subject property shall be identified on the Zoning Maps by the appropriate district designation. A parallel conditional zoning shall be identified by the same designation as the underlying general district followed by the letters "CD" (for example "0-1(CD)").

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- (4) Any conditional zoning district approved on or after October 1, 1991, shall have vested rights pursuant to N.C.G.S. Section 160A-385.1 for the period of time established pursuant to Section 1.110 of this Zoning Ordinance, except as such vested rights may be altered as allowed by N.C.G.S. Section 160A-385.1(e). Vested rights shall remain effective beyond the end of the period of time established pursuant to Section 1.110 of this Ordinance for any buildings or uses for which a valid building permit had been issued during the vested rights period, so long as such building permit is valid. Notwithstanding, the foregoing, property governed by this subsection shall not include as a permitted use an adult establishment, unless the approved site plan explicitly provides that an adult establishment is a permitted use or the site meets the standards of Section 12.518.

#### **Section 6.207. Alterations to approval.**

*(Petition No. 2007-27, § 6.207, 04/16/07)*

- (1) Changes to an approved site plan.

Except as provided in subsection 6.207(2) below, changes to an approved petition or to the conditions attached to the approved petition shall be treated the same as amendments to these regulations or to the Zoning Maps and shall be processed in accordance with the procedures in this Chapter.

- (2) Administrative amendment process.

- (a) Application for an administrative amendment. Any request for an administrative amendment shall be pursuant to a written letter, signed by the property owner, to the Planning staff detailing the requested change. Upon request, the applicant must provide any additional information that is requested. Accompanying the letter shall be the applicable fee for administrative review.
- (b) Authority to approve an administrative amendment. The Planning Director or designee shall have the delegated authority to approve an administrative amendment change to an approved site plan. The standard for approving or denying such a requested change shall be that the change does not significantly alter the site plan or its conditions and that the change does not have a significant impact upon abutting properties.



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Any changes that increase the intensity of the development are limited for nonresidential development to 10% of the approved requirement or 1,000 square feet, whichever is less. For residential development, increases in density are limited to 10% of the development or no more than 5 dwelling units, whichever is less.

Significant changes to an approved site plan that can not be considered through an administrative amendment include the following:

- (a) Increasing the number of buildings
- (b) Increasing the number of dwelling units more than five (5) units or 10% of the total approved, whichever is less.
- (c) Adding driveways to thoroughfares
- (d) Reducing parking spaces below the minimum standards
- (e) Reducing buffers or yards
- (f) Moving structures closer to adjacent properties in a residential district or when abutting a residential use.
- (e) Reducing open space
- (f) Changing owner occupied units to rental if noted on the site plan
- (g) Increasing the mass of buildings.

The Planning Director or designee, however, shall always have the discretion to decline to exercise the delegated authority either because the designee is uncertain about approval of the change pursuant to the standard or because a rezoning petition for a public hearing and City Council consideration is deemed appropriate under the circumstances. If the Planning Director or designee declines to exercise this authority, then the applicant can only file a rezoning petition for a public hearing and Council decision.

- (c) Staff decision, notifications, appeal process.
  - (i) Approval where there was a valid protest petition in effect on the original rezoning petition. If an administrative amendment is approved, and a valid protest petition was filed against the original petition on or after January 1, 2006 (even if it was withdrawn), then the Planning Director or designee shall:
    1. Send written notification of the approval to adjacent property owners within 300' of the subject parcel (exclusive of rights-of-way), and

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2. Send written notification of the approval to neighborhood leaders, as listed by the Planning Department, within one mile of the subject site.
3. Post a sign on the subject property, indicating that the staff has granted an administrative amendment.

Adjacent property owners within 100' (exclusive of rights-of-way) have the right to file an appeal with the Planning Director or designee within 21 days from the date of the written notification. The Zoning Committee of the Planning Commission shall hear the appeal through a quasi-judicial process.

- (ii) Approval without valid protest petition in effect on the date of the original rezoning decision. If an administrative amendment is approved, adjacent property owners within 100' (exclusive of rights-of-way) have the right to file an appeal with the Planning Director or designee within 21 days of the date the decision was filed, although no notification to adjacent property owners is required.
- (iii) Denial. If an administrative amendment is denied, then the Planning Director or designee shall send written notification of the denial to the applicant. The applicant shall have 21 days from the date of the written notification to file an appeal of the decision with the Planning Director or designee.

If the denial is appealed, then the Planning staff shall send written notification to adjacent property owners within 300' of the subject parcel (exclusive of rights-of-way), notifying them of the appeal.

The Zoning Committee of the Planning Commission shall hear the appeal through a quasi-judicial process.

- (d) Zoning Committee Appeal Process.
  - (i) The Zoning Committee of the Planning Commission shall hold a quasi-judicial meeting to hear the appeal. The Zoning Committee may affirm, reverse or modify the decision under appeal, making findings of fact and conclusions of law to support its decision.
  - (ii) Appeals of the Zoning Committee decision may be made to Superior Court.

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#### **Section 6.208. Review of approval of a conditional zoning district.**

It is intended that property shall be reclassified to a conditional zoning district only in the event of firm plans to develop the property. Therefore, no sooner than three years after the date of approval of the petition, the Planning Commission may examine the progress made toward developing the property in accordance with the approved petition and any conditions attached to the approval. If the Planning Commission determines that progress has not been made in accordance with the approved petition and conditions, the Planning Commission shall forward to the City Council a report, which may recommend that the property be classified to another district.

#### **Section 6.209. Protest Petitions**

Protest petitions shall not be valid for any amendment to an adopted conditional district if the amendment does not change the types of uses that are permitted within the district or increase the approved density for residential development, or increase the total approved size of nonresidential development, or reduce the size of any buffers or screening approved for the conditional district.

*(Petition No. 2006-16 §6.209, 03/20/06)*