

Petition No. 2006-016

Petitioner: Charlotte-Mecklenburg Planning Commission

ORDINANCE NO.

**AN ORDINANCE AMENDING APPENDIX A
OF THE CITY CODE –ZONING ORDINANCE**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHARLOTTE:

Section 1. Appendix A, "Zoning" of the Code of the City of Charlotte is hereby amended as follows:

A. CHAPTER 1: PURPOSE AND APPLICABILITY

1. Amend Section 1.102, "Authority and Purpose", subsection (1) by revising the purpose statement to bring it into conformance with new state legislation. The current Section reads as follows:

Section 1.102. Authority and purpose.

These regulations are adopted pursuant to the authority granted to the City of Charlotte by Chapter 160A, Article 19, of the General Statutes of North Carolina, and by any special local legislation enacted by the General Assembly for the City of Charlotte, in order to carry out the purposes listed below:

- (1) These zoning regulations have been designed to lessen congestion in the streets, to secure safety from fire, panic and other dangers, to promote health and the general welfare, to provide adequate light and air, to prevent the overcrowding of land, to avoid undue concentration of population, and to facilitate the adequate and economic provision of transportation, water, sewerage, schools, parks and other public facilities and services.
- (2) The zoning districts and maps have been made with due consideration of future growth, development, and change in land development according to objectives expressed in the general plan or more detailed plan or policy for the development of the community, as well as with due consideration of existing development and uses of land in the City of Charlotte.
- (3) These regulations and districts represent reasonable consideration of the character of the districts and their peculiar suitability for particular uses of land and have been made with a view to preserving the existing environment and/or assuring the development of a future environment that realizes the greatest possible use and enjoyment of land on individual properties. This is balanced against the necessary protection of the values of

buildings and land and the use and enjoyment of land on adjacent properties and with the objective of promoting and protecting the public welfare through the regulation of land use and the process of land development.

The revised section shall read as follows:

Section 1.102. Authority and purpose.

These regulations are adopted pursuant to the authority granted to the City of Charlotte by Chapter 160A, Article 19, of the General Statutes of North Carolina, and by any special local legislation enacted by the General Assembly for the City of Charlotte, in order to carry out the purposes listed below:

- (1) **These zoning regulations have been designed to promote the public health, safety, and general welfare. To that end, the regulations address, among other things, the following public purposes:** to lessen congestion in the streets, to secure safety from fire, panic and other dangers, to promote health and the general welfare, to provide adequate light and air, to prevent the overcrowding of land, to avoid undue concentration of population, and to facilitate the **efficient and** adequate provision of transportation, water, sewerage, schools, parks and other public facilities and services.
- (2) The zoning districts and maps have been made with due consideration of future growth, development, and change in land development according to objectives expressed in the general plan or more detailed plan or policy for the development of the community, as well as with due consideration of existing development and uses of land in the City of Charlotte.
- (3) These regulations and districts represent reasonable consideration of the character of the districts and their peculiar suitability for particular uses of land and have been made with a view to preserving the existing environment and/or assuring the development of a future environment that realizes the greatest possible use and enjoyment of land on individual properties. This is balanced against the necessary protection of the values of buildings and land and the use and enjoyment of land on adjacent properties and with the objective of promoting and protecting

B. CHAPTER 3: DECISION MAKING AND ADMINISTRATIVE BODIES

1. PART 3: BOARD OF ADJUSTMENT

- (a) Amend Section 3.301, “Powers and duties” by adding a new subsection (6) to note that use variances are not permitted. The current entire section reads as follows, with the addition of a new subsection (6):

Section 3.301. Powers and duties.

The Zoning Board of Adjustment shall have the following powers and duties to be carried out in accordance with these regulations which include, but are not limited to, the following:

- (1) To hear and decide appeals from and to review any specific order, requirement, decision, or determination made under these regulations by the Zoning Administrator.
- (2) To hear and decide petitions for variances from these regulations in accordance with the provisions of Section 5.108.
- (3) To adopt such rules of procedure necessary for the administration of its responsibilities not inconsistent with these regulations.
- (4) To assume any other duties assigned by the City Council.
- (5) The Board of Adjustment shall not have jurisdiction with respect to Section 6.201 Conditional Districts except as provided in this section. The Board of Adjustment shall have jurisdiction with respect to conditional districts if the request pertains to a variance from specified minimum requirements of the zoning ordinance and is filed with the Board prior to the approval of a conditional district. In addition the Board of Adjustment may also hear and decide on various petitions for approved conditional district plans on matters related to ordinance provisions which are not associated with specifically approved conditions of the plan that are more restrictive than minimum ordinance requirements. At no time shall the Board of Adjustment have authority to consider a variance relating to the number of or size of permissible signs in a conditional district.
- (6) The Board of Adjustment shall not have authority to grant variances for use changes.**

C. CHAPTER 5: APPEALS AND VARIANCES

1. Amend Section 5.101, “Authority of City of Charlotte”, subsections (2) and (3) by updating the text with regards to new legislation, in particular the fact that conditions

must be related to the conditions and circumstances for which the variance is sought. The current section reads as follows:

Section 5.101. Authority of City of Charlotte.

- (1) The Board of Adjustment shall have the authority to hear and decide appeals from and to review any specific order, requirement, decision, or determination made under these regulations by the Zoning Administrator.
- (2) The Board of Adjustment shall have the authority to hear and decide petitions for variances from the requirements of these regulations which relate to uses of land or the establishment, extension, or use of structures.
- (3) The Board of Adjustment shall have the authority to impose reasonable conditions and safeguards that the Board judges ought to be made on the lot involved with respect to the uses of land or the establishment, extension, or use of structures.
- (4) The Board of Adjustment shall not have jurisdiction with respect to Section 6.201 Conditional Zoning Districts except as provided in this section. The Board of Adjustment shall have jurisdiction with respect to conditional zoning districts if the request pertains to a variance from specified minimum requirements of the zoning ordinance and is filed with the Board prior to the approval of a conditional zoning district. In addition the Board of Adjustment may also hear and decide on various petitions for approved conditional zoning district plans on matters related to ordinance provisions which are not associated with specifically approved conditions of the plan that are more restrictive than minimum ordinance requirements. At no time shall the Board of Adjustment have authority to consider a variance relating to the number of or size of permissible signs in a conditional zoning district.
- (5) Pursuant to G.S. §160A-388(b) and (d), the Board of Adjustment only has the statutory authority to grant or to deny variances and to determine if the zoning administrator correctly or incorrectly interpreted and applied the zoning ordinance in rendering a decision. The Board of Adjustment does not have jurisdiction to address or rule upon constitutional and federal and state statutory issues or any other legal issues beyond its statutory authority.

The revised Section shall reads as follows:

Section 5.101. Authority of City of Charlotte.

- (1) The Board of Adjustment shall have the authority to hear and decide appeals from and to review any specific order, requirement, decision, or determination made under these regulations by the Zoning Administrator.
- (2) The Board of Adjustment shall have the authority to hear and decide petitions for variances from the requirements of these regulations **so that the spirit of the ordinance is observed, public safety and welfare secured, and substantial justice done.**
- (3) The Board of Adjustment shall have the authority to impose reasonable **and appropriate** conditions and safeguards that the Board judges to be reasonably **related to the condition or circumstance that gives rise to the need for a variance.**
- (4) The Board of Adjustment shall not have jurisdiction with respect to Section 6.201 Conditional Zoning Districts except as provided in this section. The Board of Adjustment shall have jurisdiction with respect to conditional zoning districts if the request pertains to a variance from specified minimum requirements of the zoning ordinance and is filed with the Board prior to the approval of a conditional zoning district. In addition the Board of Adjustment may also hear and decide on various petitions for approved conditional zoning district plans on matters related to ordinance provisions which are not associated with specifically approved conditions of the plan that are more restrictive than minimum ordinance requirements. At no time shall the Board of Adjustment have authority to consider a variance relating to the number of or size of permissible signs in a conditional zoning district.
- (5) Pursuant to G.S. §160A-388(b) and (d), the Board of Adjustment only has the statutory authority to grant or to deny variances and to determine if the zoning administrator correctly or incorrectly interpreted and applied the zoning ordinance in rendering a decision. The Board of Adjustment does not have jurisdiction to address or rule upon constitutional and federal and state statutory issues or any other legal issues beyond its statutory authority.

D. CHAPTER 6: AMENDMENTS

1. PART 1: PROVISIONS OF GENERAL APPLICABILITY

- (a) Amend Section 6.110, "Hearing", subsection (3) by adding the requirement that the Planning Commission (Zoning Committee) shall advise and comment on whether the proposed rezoning petition is consistent with adopted plans. The current text reads as follows:

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 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.

The revised text shall read as follows:

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.

In making its written recommendation, the Planning Commission shall also advise and comment on whether the rezoning 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.

- (b) Amend Section 6.111, “Action by City Council” , subsections (2), (3), and (4) and adding a new subsection (5) to match new state legislation. The current section reads as follows:

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 Commission 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.
- (2) In considering any petition to reclassify property, the City Council may consider, although not required to, the following:
 - (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;
 - (b) Whether the proposed reclassification is compatible with the overall character of existing development in the immediate vicinity of the subject property;
 - (c) 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
 - (d) Whether the proposed reclassification will adversely affect a known archaeological, environmental, historical, or cultural resource.
- (3) 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.

The revised section shall reads as follows:

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 Commission 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.
- (2) **In considering any petition to reclassify property, the City Council shall consider the following items:**
 - (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:
 - (a) Whether the proposed reclassification is compatible with the overall character of existing development in the immediate vicinity of the subject property;
 - (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) 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.

- (5) **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.**

- (c) Amend Section 6.113, "Protest Petitions", subsection (1) and (3) to incorporate new legislation regarding protest petitions. Section 6.113 currently reads as follows:

Section 6.113. Protest petitions.

- (1) In the event that the City Council receives a petition protesting any reclassification of property, and signed by the owners of 20 percent or more, either of the area of the lots included in a proposed amendment, or of those immediately adjacent thereto either in the rear thereof or on either side thereof, extending 100 feet therefrom, or of those directly opposite thereto extending 100 feet from the street frontage of the opposite lots, 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. The protest petition shall include the signature and address of each protesting property owner and a map showing the location of the property of each owner signing the protest petition in relation to the property which is the subject of the amendment being protested.

- (2) No protest against any change in or amendment to a zoning ordinance or zoning map shall be valid or effective for the purposes of G.S. § 160A-385, and subsection (1), unless it 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, and unless it shall have 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 the close of business on a 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, and state that the submitted signatures have the purpose of deleting the signers from the protest petition. A withdrawn protest may not be reinstated after the deadline for filing protests set forth in subsection (2).

The revised text shall read as follows:

Section 6.113. Protest petitions.

- (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% 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 include the signature and address of each protesting property owner and a map showing the location of the property of each owner signing the protest petition in relation to the property which is the subject of the amendment being protested.

- (2) No protest against any change in or amendment to a zoning ordinance or zoning map shall be valid or effective for the purposes of G.S. § 160A-385, and subsection (1), unless it 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, and unless it shall have 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 the close of business on a 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, and state that the submitted signatures have the purpose of deleting the signers from the protest petition. **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).

2. PART 2: CONDITIONAL ZONING DISTRICTS.

- (a) Amend Section 6.205, Conditions to approval of petitions” by updating the text to state that conditions must be mutually approved by the City and the petitioner. The current section reads as follows:

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. 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.

The revised section shall read as follows:

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.**

- (b) Add a new Section 6.209 to provide updated information on protest petitions as they relate to conditional zoning districts. The new language shall read as follows:

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.

Section 2. That this ordinance shall become effective upon its adoption.

Approved as to form:

City Attorney

I, _____, City Clerk of the City of Charlotte, North Carolina, DO HEREBY CERTIFY that the foregoing is a true and exact copy of an Ordinance adopted by the City Council of the City of Charlotte, North Carolina, in regular session convened on the ____ day of _____, 2006, the reference having been made in Minute Book _____, and recorded in full in Ordinance Book _____, Page(s)_____.

WITNESS my hand and the corporate seal of the City of Charlotte, North Carolina, this ____ day of _____, 2006.
