ZONING COMMITTEE
RECOMMENDATION
March 1, 2006

Rezoning Petition No. 2006-016

Petitioner: Charlotte-Mecklenburg Planning Commission

Request: This text amendment will bring the Zoning Ordinance into compliance with new state legislation.

Action: The Zoning Committee voted unanimously to recommend **APPROVAL** of this text amendment.

Vote:
Yeas: Carter, Cooksey, Farman, Howard, Hughes, Ratcliffe, and Sheild
Nays: None
Absent: None

Summary of Petition

Suggested modifications to the Zoning Ordinance are highlighted below:

Purpose Statement: A general statement has been added that the zoning regulations are designed to promote the public health, safety, and general welfare.

Use Variances: Up until now, a North Carolina case forbidding "use variances" (*Lee v. Board of Adjustment*) laid the groundwork for prohibiting use variances in North Carolina. However, the new legislation has now codified this ruling. This text amendment states that the Board of Adjustment shall not have the authority to grant variances for use changes.

Variances: The Board currently has the authority to hear and decide variances. Legally, the Board has always decided variances based on preserving the spirit of the ordinance, ensuring public safety and welfare are secured, and substantial justice done. This text amendment simply adds that clause into the Zoning Ordinance.

Variance Conditions: The Board currently has the authority to impose reasonable conditions and safeguards to a variance. New language has been added that the conditions should also be appropriate and related to the circumstances that gives rise to the need for the variance.

Planning Commission Determination of Consistency: The new legislations requires the Planning Commission to advise and comment on whether a rezoning petition is consistent with the purposes, goals, objectives, and policies of adopted plans. This language has been added

City Council Consistency Statement: The new legislation requires the City Council to adopt a statement describing whether its action is consistent with the purposes, goals, objectives, and policies of adopted plans. It also requires Council to provide an explanation why the action taken is reasonable and in the public interest. This language has been added in this text amendment.

Protest Petitions: The rules for protest petitions have changed significantly, with the intent of simplifying the process. The new regulations require that a protest petition by signed by the owners of either 20% 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. Street right-of-ways shall not be considered in computing the 100' buffer as long as the right-of-way is 100 feet wide or less. When a rezoning request consists of rezoning less than the entire parcel of land, then the 100' buffer shall be measured from the property line of that parcel.

The text is also amended to state that if there are vacant positions on City Council or members who are excused from voting, these positions or members shall not be considered "members of Council" for calculation of the required supermajority vote. Protest petitions must be valid at the time of the vote.

And last, new language has been added on protest petitions as they relate to conditional zoning districts. 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.

Conditional rezoning Conditions: In approving conditional zoning districts, the Council has the authority to set reasonable and appropriate conditions. New language has been added that the conditions and site-specific standards shall be limited to those that address the conformance of the development and use of the site to adopted ordinances and plans that address the impacts reasonably expected to be generated by the development or use of the site. This text amendment also specifies that only those conditions which are mutually agreed to by the Council and the petitioner may be incorporated into the petition.

Voting: Planning Commission members and City Council members shall not vote on any matter where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable impact on the member

Zoning Committee Discussion/Rationale

Mr. MacVean summarized the text amendment, noting that the amendments bring the Zoning Ordinance into compliance with the new Senate Bill 814 and Senate Bill 518.

Statement of Consistency

Upon a motion made by Howard and seconded by Cooksey, the Zoning Committee voted unanimously in finding this amendment consistent with state law and the Zoning Ordinance.

Vote

Upon a motion made by Carter and seconded by Howard, the Zoning Committee voted unanimously to recommend approval of this text amendment.

Staff Opinion

Staff agrees with the recommendation of the Zoning Committee.