

Petition No. 2006-116

Petitioner: Charlotte-Mecklenburg Planning Commission

Revised 9-7-06, 9-12-06, 9-14-06

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

ORDINANCE NO.

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 3: DECISION MAKING AND ADMINISTRATIVE BODIES

1. PART 5: PROFESSIONAL STAFF

- a. Amend Section 3.502, "Land Use and Environmental Services Agency (LUESA); powers and duties" by adding a new subsection (5) to match the language and duties transferred per the Interlocal Cooperation Agreement as amended May, 2005. The revised section shall read as follows:

Section 3.502. Land Use and Environmental Services Agency (LUESA); powers and duties.

In addition to any authority granted to the Land Use and Environmental Services Agency (LUESA) by other laws and ordinances, the Land Use and Environmental Services Agency 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 distribute applications for building permits, and certificates of occupancy as required by these regulations.
- (2) To review applications for building permits, and certificates of occupancy, and issue building permits and certificates of occupancy as required by City and County ordinances.
- (3) To maintain files and other public records related to the administration of these regulations.
- (4) To provide the City Council and Planning Commission with reports and recommendations, at their direction, with respect to matters before those bodies under the provisions of these regulations.

(5) Any such other duties and responsibilities delegated by the city to the county.

- b. Amend Section 3.503, “Engineering and Property Management; powers and duties” by adding a new subsection (1) and (7) to the list of powers and duties of this department, and refining the applicable codes that rezoning petitions are reviewed against. Make revisions to the text to reflect the operations divided between departments. The revised text shall read as follows:

Section 3.503 Engineering and Property Management; powers and duties.

In addition to any authority granted to Engineering and Property Management by other laws and ordinances, Engineering and Property Management shall have the powers and duties, in accordance with these regulations, which include, but are not limited to, the following:

- (1) To conduct inspections and enforce the provisions of the Zoning Ordinance.
- (2) To review rezoning petitions to determine compliance of the proposed development with the Zoning Ordinance requirements and other applicable city ordinances, including Soil Erosion and Sedimentation Control Ordinance, Subdivision Ordinance, Storm Water Ordinance, Tree Ordinance, and any other applicable ordinances that may be adopted by the City Council. ~~City ordinances, including engineering, erosion control, urban forestry, and drainage.~~
- (3) To review applications for building permits to determine compliance of the proposed development with city land development requirements as set forth in applicable city ordinance, including Soil Erosion and Sedimentation Control Ordinance, Subdivision Ordinance, Storm Water Ordinance, Tree Ordinance, and any other applicable ordinances that may be adopted by the City Council. ~~City requirements for engineering, erosion control, urban forestry, and drainage.~~
- (4) To distribute applications for zoning permits, change of use permits, signs, and other miscellaneous zoning permits as required by these regulations.

- (5) To review zoning permit applications and plans for residential and non-residential commercial land development projects (including but not limited to office, retail, and industrial projects) and planned multi-family projects, and perform subsequent field inspections and monitoring ~~through construction~~ to ensure compliance with the Zoning Ordinance, and other applicable city ordinances, including Soil Erosion and Sedimentation Control Ordinance, Subdivision Ordinance, Storm Water Ordinance, Tree Ordinance, and any other applicable ordinances that may be adopted by the City Council.
- (6) To provide the City Council and Planning Commission with reports and recommendations, at their direction, with respect to matters before those bodies under the provisions of these regulations.
- (7) Any such other duties and responsibilities delegated by the County to the City. ~~transferred from the County to the City as per the Interlocal Cooperation Agreement as amended May 2005.~~

- c. Amend Section 3.511, “Neighborhood Development; powers and duties” by adding a new subsection (6) referring to all other duties and responsibilities delegated by the County to the City. The revised section shall read as follows:

Section 3.511 Neighborhood Development; powers and duties.

In addition to any authority granted Neighborhood Development by other laws and ordinances, Neighborhood Development shall have the powers and duties, in accordance with these regulations, which include, but are not limited to, the following:

- (1) To enforce the provisions of Zoning Ordinance regulations and conduct inspections.
- (2) To review rezoning petitions to determine compliance of the proposed development with the Zoning Ordinance requirements and other City ordinances.
- (3) To distribute applications for zoning permits, change of use permits, customary home occupations, signs, and other miscellaneous zoning permits as required by these regulations.

- (4) To review zoning permit applications and plans for residential land development projects (excluding planned multi-family projects) and subsequent field inspections and monitoring through construction to ensure compliance with the Zoning Ordinance.
- (5) To provide the City Council and Planning Commission with reports and recommendations, at their direction, with respect to matters before those bodies under the provisions of these regulations.
- (6) Any such other duties and responsibilities delegated by the County to the City. ~~transferred from the County to the City as per the Interlocal Cooperation Agreement as amended May 2005.~~

B. CHAPTER 4: DEVELOPMENT APPROVAL

- 1. Amend Section 4.102, “Building permit required” by replacing the language, “Director of Building Standards” with “Director of Land Use and Environmental Services Agency, or his or her authorized designee”. The revised text shall read as follows:

Section 4.102. Building permit required.

- (1) It is illegal for any person to begin the construction, reconstruction or demolition of a structure or any part of a structure, or to begin to excavate a structure, or to make any structural repairs, alterations, or additions to any structure, or to commence construction of any paved ~~area,~~ area which will result in an area of more than twenty thousand square feet of impervious cover, without obtaining a building permit from the Director of ~~Building Standards.~~ Land Use and Environmental Services Agency (LUESA), or his or her authorized designee.
 - (2) The Director of ~~Building Standards~~ Land Use and Environmental Services Agency (LUESA), or his or her authorized designee, will not issue a building permit unless the plans, specifications, and intended use of the structure conform to the requirements of these regulations. The application for a building permit must be accompanied by information sufficient to allow the Director of Building Standards to act on the request and be filed in the office of Director of Building Standards accompanied by a fee established by the City Council.
- 2. Amend 4.103, “Certificate of occupancy required” to add new language detailing when a certificate of occupancy will not be issued, and that a certificate may be

suspended or revoked if it was issued in error or on the basis of incorrect information. The revised section shall read as follows:

Section 4.103. Certificate of occupancy required.

- (1) It is illegal for any person to occupy or use any land, building, or structure or change the use of any land, building, or structure, except for land used for agricultural purposes, without first obtaining a certificate of occupancy.
- (2) A certificate of occupancy shall not be issued unless it has been determined that the site, parcel, building or structure is in compliance with all applicable provisions of these regulations.

3. Amend Section 4.104, “Zoning Review” by detailing the responsibilities and duties of various City and County Departments with respect to zoning reviews. The section shall then read as follows:

Section 4.104. Zoning review.

~~Engineering and Property Management shall conduct reviews and make approvals of zoning compliance under these regulations for the issuance of zoning permits, change of use permits, and sign permits related to planned multi-family projects and commercial projects, including office, institutional, retail and industrial projects. Neighborhood Development shall conduct reviews and make approvals of zoning compliance under these regulations for the issuance of zoning permits, change of use permits, and sign permits related to all other residential projects, and all existing land uses.~~ Professional Staff identified in Chapter 5 of Chapter 3 shall conduct reviews and make approvals of zoning compliance under all applicable provisions of these regulations. Professional Staff is authorized to withhold approval for the issuance of, suspend, or revoke a building permit or a certificate of occupancy if it is determined that a project, structure, site or lot is not in compliance with applicable provisions of this ordinance.

4. Amend Section 4.106, “Public notification process for certain land uses” by revising the language to allow the Zoning Administrator to designate which department will handle the public notification process. The revised section shall read as follows:

Section 4.106. Public notification process for certain land uses.

- (1) Purpose

There are certain land uses which, because of their nature or scale, may have particular impacts on both the immediate area and the community as a whole. While

these uses may be permitted under prescribed conditions, the neighboring property owners as well as the general public should have the opportunity to learn about these uses, present relevant information that may affect the extent or design of the project, to rebut information supplied by the permit applicant, to ask questions, and to present any pertinent evidence regarding the petition and the requirements of this ordinance. Part of this process will be accomplished through the means of a public forum.

(2) Notification process

In order to facilitate the exchange of information and dialogue, the following process is established for certain land uses so specified:

- (a) The Zoning Administrator, individually, or by and through his or her authorized designees in Engineering and Property Management (for commercial and planned multi-family projects) or Neighborhood Development, (for all other residential projects) and Charlotte-Mecklenburg Planning Commission, will cause the subject site to be posted with a notice stating that the proposed use has been requested, where additional information may be obtained, and establishing a date, time and place for a public forum. The Zoning Administrator, or his or her authorized designees Engineering and Property Management (for commercial and planned multi-family projects) or Neighborhood Development (for all other residential projects) will also mail a notice to affected property owners, as shown on the current City tax abstracts, within 100 feet of the proposed site including those across a street as well as those neighborhood leaders, as listed by the Planning department, within one mile of the proposed site. Such notice will be posted and mailed within 10 working days from the time that the Engineering and Property Management or Neighborhood Development staff determines that the application is complete. The public forum should be held within 30-calendar days of the posting of the sign(s) and the mailing of the notices.
- (b) ~~Applicant's~~ Applicants shall be responsible for supplying ~~Engineering and Property Management (for commercial and planned multi-family projects) or Neighborhood Development (for all other residential projects)~~ the Zoning Administrator, or his or her authorized designees with postage paid envelopes addressed to adjacent property owners and neighborhood leaders as noted above. Any error in an owner's or neighborhood leaders' list or

any other procedural error or omission shall not invalidate the issuance of an otherwise properly issued permit.

- (c) The designated agency shall not render a decision on the proposed use until a minimum of 21 calendar days has elapsed following the date of the forum. The 21-day period may be used by all parties to submit written statements of rebuttal to the designated agency. The designated agency will consider only those rebuttal statements that relate to the compliance of the proposed use with the provisions of this ordinance.
- (d) Within five (5) business days after making a decision on the proposed use, ~~Engineering and Property Management or Neighborhood Development staff~~ the Zoning Administrator, or his or her authorized designees, will mail a notice of the decision to the affected property owners and any other persons who commented on the proposed issuance of the permit whose addresses are known.

C. CHAPTER 5: APPEALS AND VARIANCES

1. Amend Section 5.101, “Authority of City of Charlotte”, subsection (1) by including decisions or determinations made by designees of the Zoning Administrator. The remaining subsections remain unchanged. The revised subsection shall read 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, or by his or her authorized designee.
2. Amend Section 5.103, “Filing of notice of appeal”, subsection (1) by allowing appeals filed by a person aggrieved with the decisions of the designees of the Zoning Administrator, not just the decisions of the Zoning Administrator. The remaining subsection (2) and (3) remain unchanged. The revised section shall read as follows:

Section 5.103. Filing of notice of appeal.

- (1) A notice of appeal, in the form prescribed by the Board of Adjustment, shall be properly filed by a person aggrieved with the decision of the Zoning Administrator, or of his or her authorized designee, or the Director of Land Use and

Environmental Services Agency (LUESA), or of his or her authorized designee ~~decision~~ within thirty (30) days of the decision. Pursuant to N.C.G.S. §160A-388(d), when passing upon appeals, the Board shall have jurisdiction to grant variances for any violations but shall have that jurisdiction for variances only at that time. If an applicant fails to request variances at that time, then the applicant shall forfeit the right to seek variances for the stated violations. The Board shall not have jurisdiction to grant variances. The notice filed with the Zoning Administrator shall be accompanied by a nonrefundable filing fee as established by City Council. Failure to timely and properly file such notice and the fee shall constitute a waiver of any rights to appeal under this chapter and the Board of Adjustment shall have no jurisdiction to hear the appeal.

D. CHAPTER 8: ENFORCEMENT

1. Amend Section 8.101, “Enforcement by Zoning Administrator” by amending the title and authorizing the Zoning Administrator to enforce the provisions of this ordinance, as well as other departments. The revised section shall read as follows:

Section 8.101. Enforcement by Zoning Administrator.

~~After a building permit has been issued by the Land Use and Environmental Services Agency (LUESA), and through the construction period, zoning compliance for commercial and planned multi-family projects shall be monitored and enforced by Engineering and Property Management.~~

~~After a Certificate of Occupancy has been issued, monitoring and enforcement of these regulations, for all types of land uses, shall be handled by Neighborhood Development.~~

The Zoning Administrator, individually, or by and through his or her authorized designees including the professional staff identified in Part 5 of Chapter 3, is authorized to enforce the provisions of this ordinance.

2. Amend Section 8.102, “Enforcement procedures” by adding the responsibilities of the Zoning Administrator and further refining the duties of other departments. The revised section shall read as follows:

Section 8.102. Enforcement procedures

~~(1) It shall be the duty of Engineering and Property Management (for commercial and planned multi-family projects, change of use permits, and associated signs) to monitor and initiate compliance for the enforcement of~~

~~these regulations from the time a building permit has been issued through the time a Certificate of Occupancy is issued. Thereafter, it shall be the duty of Neighborhood Development to monitor and enforce zoning compliance for such uses.~~

~~(2) It shall be the duty of Neighborhood Development to monitor and initiate compliance for zoning permits, change of use permits, and sign permits, except as provided for in subsection (1) above.~~

~~(3) It shall be the duty of Neighborhood Development to monitor and initiate compliance for the enforcement of these regulations for all existing development and land uses.~~

~~(4) If Neighborhood Development shall discover a violation of these regulations, Neighborhood Development shall notify the violator and give the violator a specified time to correct the violation. If the violation continues or is not corrected, Neighborhood Development shall initiate proceedings for enforcement as described in this Chapter.~~

If an inspection by the professional staff identified in Part 5 of Chapter 3 reveals a violation of these regulations, the Zoning Administrator, individually, or by and through his or her authorized designees, shall notify the violator and give the violator a specified time to correct the violation. If the violation continues or is not corrected, proceedings for enforcement shall be initiated as described in this Chapter.

3. Amend Section 8.103, "General enforcement provisions", by authorizing the professional staff identified in Chapter 3 Part 5 to have the power to impose fines and penalties and to have the authority to withhold approval of building permits and certificates of occupancy. The revised section shall read as follows:

Section 8.103. General enforcement provisions.

(Petition No. 2005-78 §8.103,06/20/05)

The provisions of this Chapter may be enforced by any one, all, or a combination of the remedies authorized and prescribed by this Chapter. If a person continues to fail to comply with a particular provision of these regulations after the imposition of any one type of penalty, the person shall continue to remain subject to the remedies prescribed by this Chapter for the continued violation of the particular provision of these regulations. The Zoning Administrator, individually, or by and through his or her authorized designees, including the professional staff identified in Part 5 of Chapter 3,

~~Neighborhood Development~~, shall have the power to impose fines and penalties for violation of the Zoning Ordinance, as provided herein, and may withhold approval for building permits and certificates of occupancy, and secure injunctions and abatement orders to further ensure compliance with the Zoning Ordinance as provided for in this Chapter. Each day's continuing violation shall be a separate and distinct offense and may be subject to any one, all, or a combination of the remedies authorized and prescribed by this Chapter.

4. Amend Section 8.105, "Citations", subsection (1) by adding text giving the professional staff identified in Chapter 3, Part 5 the authority to issue citations. The remaining subsections (2) and (3) remain unchanged. The revised subsection shall read as follows:

Section 8.105. Citations.

- (1) The Zoning Administrator, individually, or by and through his or her authorized designees, including the professional staff identified in Part 5, Chapter 3, ~~Neighborhood Development~~, is authorized empowered to issue citations to any person if there is a reasonable cause to believe that the person has violated any provision of these regulations. A violator shall be deemed to be the owner of the premises, the agent of the owner authorized to be responsible for the premises, or the occupant of the premises. Citations may be directly issued to the occupant, lessee, or person having immediate beneficial use of the property. The non-occupant owner or agent responsible for the premises each has a duty to maintain the premises in compliance with these regulations. A citation shall not be issued to a non-occupant owner, agent or occupant for those premises unless there has been written notice delivered to the owner, agent, or occupant, or mailed to the last known mailing address as shown by public records, or by making other reasonable efforts to communicate the existence of the violation to the owner, agent, or occupant.

5. Add a new Section 8.107, titled, "Other remedies", to this section. The new text shall read as follows:

Section 8.107. Other remedies.

- (1) In addition to other remedies provided for under the Zoning Ordinance, the professional staff identified in Part 5 of Chapter 3 is authorized to withhold approval for the issuance of a building permit or a certificate of occupancy to prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, moving,

maintenance, use or occupancy of the land, project, structure, or building, or to prevent any illegal act, conduct, business, or use in or about the site or premises.

- (2) In addition to other remedies provided for under the Zoning Ordinance, the professional staff identified in Part 5 of Chapter 3 is authorized to suspend or revoke a building permit or a certificate of occupancy issued under the provisions of this ordinance if it is determined that the permit or certificate of occupancy was issued in error, or on the basis of incorrect information, or when the site, parcel, building or structure, or any portion thereof, is in violation of any applicable provision of these regulations.
- (3) Written notice of the suspension or revocation of a building permit or a certificate of occupancy pursuant to Section 8.107(2) shall be given in accordance with the provisions for issuance of citations set out in Section 8.105.
- (4) Any party aggrieved by the suspension or revocation of a building permit or certificate of occupancy pursuant to Section 8.107(2) may appeal the decision in accordance with the provisions of Chapter 5.

C. TABLE OF CONTENTS.

1. Amend the table of contents to incorporate all the new sections above.

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.