

**PLANNING COMMITTEE
RECOMMENDATION
March 27, 2007**

Rezoning Petition No. 2007-027

Petitioner: Charlotte-Mecklenburg Planning Commission

Request: Text amendment to modify the administrative amendment process to match adopted City Council policy.

Action: The Planning Committee recommended **APPROVAL** of this text amendment by a vote of 5:1, with the following modifications:

- The text language of Section 6.207(c)(i)(2) should be changed to read as follows: “Send written notification of the approval to neighborhood leaders, as listed by the Planning Department, within one mile of the subject site”.
- Change the second Section 6.207(c)(ii) to 6.207(c)(iii), for the heading “Denial”.
- Check with the City Attorney to determine if there is language redundancy in the last paragraph of Section 6.207(c)(i) and Section 6.207(d)(i). Are both needed? [The City Attorney’s office found no problem with the repetition.]

Vote: Yeas: Cooksey, Howard, Johnson, Locher, and Rosenburgh

Nays: Lipton

Absent: Farman

Summary of Petition

This text amendment is the result of the City Council’s new policy (adopted in June of 2006) regarding fine-tuning of the administrative amendment process. City Council worked with staff in developing the policy, and held workshops on the process with neighborhood input. Although this text amendment has not been officially adopted yet, staff began implementing the new policy directive in June of 2006.

This text amendment will officially modify the Administrative Amendment process in the Zoning Ordinance by changing how approvals are handled based upon whether the original petition had a valid protest petition filed or not. This text amendment would require notification if an administrative amendment is approved to a site plan that had a valid protest petition filed with the original rezoning petition. Notification would consist of 1) a written notification of the decision would be sent to adjacent property owners (within 300’) and neighborhood leaders (within one mile), and 2) a sign will be posted on the property announcing the approval. Adjacent property owners within 100’ have the right to file an appeal with the Zoning Committee within 21 days from the date of the written notification.

If an approval did not have a valid protest petition in effect at the time of the original rezoning decision, then adjacent property owners within 100’ have the right to file an appeal with the Zoning Committee within 21 days of the date the decision was filed, with or without knowledge of the approval. No written notice will be sent, and no sign posted.

If an administrative amendment is denied, then the applicant shall have 21 days from the date of the written notification to appeal the decision to the Zoning Committee. The appeal process shall be quasi-judicial in nature, with appeals of the Zoning Committee decision to be made to Superior Court.

Additional modifications include a list of specific significant changes to an approved site plan that can not be considered through an administrative amendment process:

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

Planning Committee Discussion/Rationale

Keith MacVean summarized the text amendment to the administrative amendment process. This text amendment is the result of the City Council's new administrative amendment policy (adopted in June of 2006). City Council worked with staff in developing the policy, and held workshops on the process with neighborhood input. Although the amendment has not been officially adopted yet, staff began implementing the new policy directive in June of 2006. Since that time, three administrative amendments have been filed and all three were approved. Where a valid protest petition was filed with the original rezoning, staff posted signs, sent notification letters as per the new policy. Adjoining property owners had 21 days to appeal the change. To date, there were no appeals filed with respect to the administrative amendment approvals.

Mr. MacVean stated that the process change still gives authority to the Planning Director or her designee, to approve an administrative amendment. This text amendment will now, however, list nine specific significant changes where no administrative amendment can be approved by the Planning Director. To make these changes, the petitioner would be required to file a site plan amendment, where a new public hearing would be held.

This text amendment also officially appoints the Zoning Committee as the body to which an appeal is heard, through a quasi-judicial process.

Commissioner Howard asked about the notification process for an administrative amendment when there was no valid protest petition filed with the original rezoning. How would adjacent property owners would know about an administrative amendment request if no notification was sent? Mr. MacVean responded that the City Council debated this issue at length, but decided to only send written notification to adjacent property owners in two circumstances: 1) if a valid protest petition was filed against the original rezoning petition, or 2) if the administrative amendment was denied by the Planning Director and the resulting decision was appealed by the petitioner to the Zoning Committee.

Commissioner Lipton recalled that at a previous work session, the concept of the notice was important in order to respond to the adjoining owners who were left out of the process. She did not see how this text amendment fully addresses that. Mr. MacVean stated that City Council wanted the more significant administrative amendment requests to have input from adjoining owners, but only when a valid protest petition had been filed originally. Commissioner Lipton disagreed, and asked what the Planning

Committee was here to decide. Mr. MacVean responded that Council adopted a policy and this text amendment is written to officially implement their policy. City Council directed staff to only add a notification process to amendments where a valid protest petition was filed. They debated for a long time about who would be notified. Mr. MacVean noted that the Planning Committee may wish to recommend to Council that every administrative amendment would require a posted sign on the subject property, or some other form of notification. Mr. Tim Manes added that the number of administrative amendments filed have dropped from 106 in 2005 to 54 last year. Only nine cases have been filed in 2007 to date, and the response to the policy change has been positive from the community.

Commissioner Lipton asked for an explanation about when a petitioner can appeal a decision by the Planning Director when the Director is not comfortable with the changes being requested. Can the petitioner appeal if they don't like the decision of the Planning Director? Mr. MacVean responded that historically, there have been no appeals filed when staff is not comfortable with the administrative amendment being requested. The petitioner has the right to appeal to the Zoning Committee. However, the Zoning Committee is bound by the same limitations as the Planning Director when evaluating an appealed administrative amendment.

Commissioner Lipton noted that there were no time provisions included on how long the Planning Director may take to reach a decision. Mr. MacVean stated that typically, the Director makes a decision within one week.

Commissioner Lipton asked what happens five years from now when there was a valid protest petition filed, and the adjacent property has changed ownership. Mr. MacVean responded that with or without a valid protest petition, a majority of the City Council voted to allow the appeal to be filed by the current property owners.

Commissioner Lipton asked if a homeowner has the right to appeal on the 20th day, and asked if there was an appeal form that had to be filed. Mr. MacVean answered that yes, a property owner can file on the 20th day. There is no appeal form; staff will accept a written letter requesting an appeal, or an e-mail.

Commissioner Howard asked Mr. MacVean to review the items that the Planning Director has a right to change. Mr. MacVean reviewed the list. Commissioner Cooksey asked if an administrative amendment could be granted that requested the elimination of a building to provide more open space. Would this be allowed in the transit zoning districts? Mr. MacVean responded that yes, more open space could be provided. Commissioner Lipton asked if such a note could be added about the TOD district to prevent problems from arising. Mr. MacVean stated that to add more text can raise new problems as well.

Commissioner Rosenburgh commented that in many jurisdictions, an administrative amendment permits a 10% variance in standards. Mr. MacVean stated that the Zoning Ordinance currently allows a 10% increase in the intensity of the development for nonresidential development, 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 five dwelling units, whichever is less. This text amendment will list specific types of administrative amendment circumstances that cannot be approved without holding a new public hearing.

Commissioner Johnson asked how neighborhood organizations were validated. Mr. MacVean responded that people representing neighborhoods call and ask to be placed on the neighborhood leader contact list maintained by the Planning Department. Staff does not verify the information to check to see that the person was authorized to represent the neighborhood. Commissioner Johnson stated she was concerned that not all the neighborhood organizations were listed.

Commissioner Cooksey asked if “neighborhood organization” was defined in the Zoning Ordinance. Mr. MacVean stated a definition is not needed in the Zoning Ordinance since the Neighborhood Organization/Neighborhood Leader list is a separate document maintained by the Planning Department. He referred to several sections of the Zoning Ordinance. Commissioner Howard stated that he was concerned that the language referencing the neighborhood organization or leader list should be consistent with language found elsewhere in the Ordinance. Mr. MacVean indicated that could be fixed easily.

Note: Staff was asked to check with the City Attorney to determine if there is language redundancy in the last paragraph of Section 6.207(c)(i) and Section 6.207(d)(i). Are both needed? Terrie Hagler-Gray indicated that having the statement in two sections may be repetitive, but was not problematic. She also encouraged staff to review Section 6.207(c)(i) and (ii) to make them more consistent with the right of adjacent owners to appeal, and provide more detail about the process in those circumstances. Staff will be making these minor changes for clarity.

Statement of Consistency

Upon a motion made by Howard and seconded by Rosenburgh the Planning Committee unanimously found this petition to be consistent with City Council policy and local zoning authority and consistent with the purpose of adopted plans and policies.

Vote

Upon a motion made by Johnson and seconded by Howard the Planning Committee voted 5:1 to recommend approval of this petition with the following modifications:

- **The text language of Section 6.207(c)(i)(2) should be changed to read as follows: “Send written notification of the approval to neighborhood leaders, as listed by the Planning Department, within one mile of the subject site”.**
- **Change the second Section 6.207(c)(ii) to 6.207(c)(iii), for the heading “Denial”.**
- **Check with the City Attorney to determine if there is language redundancy in the last paragraph of Section 6.207(c)(i) and Section 6.207(d)(i). Are both needed?**

Minority Opinion

Commissioner Lipton voted to not approve this text amendment due to the inadequacy of the notification provisions. She would prefer that a sign be posted on all properties where an administrative amendment is requested, regardless of whether there is a valid protest petition or not.

Staff Opinion

Staff agrees with the recommendation of the majority Planning Committee.