

**ARTICLE VIII**  
**AMENDMENTS**

**8-1 AMENDMENTS IN GENERAL**

- (A) Amendments to the text of this Ordinance or to the zoning map may be made in accordance with the provisions of this Article.
- (B) Conditional use district rezoning requests shall be made in accordance with the provisions of Section 8-7.
- (C) As provided in NCGS 153A-344(b), amendments, modifications, supplements, repeals or other changes in zoning regulations and restrictions and zone boundaries shall not be applicable or enforceable without consent of the owner with regard to buildings and uses for which either (i) a building permit has been issued pursuant to NCGS 153A-357 prior to the enactment of the ordinance making the change or changes as long as the permit remains valid and unexpired pursuant to NCGS 153A-358 and unrevoked pursuant to NCGS 153A-362 or (ii) a vested right has been established pursuant to NCGS 153A-344.1 and the provisions of Section 4-15 of this Ordinance and such vested right remains valid and unexpired.

**8-2 INITIATION OF AMENDMENTS**

- (A) Any person or organization may petition the Board of Commissioners to amend this Ordinance. The petition shall be filed with the Zoning Administrator and shall include, among the information deemed relevant by the Zoning Administrator:
  - (1) The name, address, and phone number of the applicant;
  - (2) A metes and bounds description and a scaled map of the land affected by the amendment if a change in zoning district classification is proposed; and
  - (3) A description of the proposed map change or a summary of the specific objective of any proposed change in the text of this Ordinance.
- (B) Petitions for amendments shall be submitted to the Zoning Administrator 20 days prior to the date of the Planning Board meeting at which the petition will be reviewed.

**8-3 PLANNING BOARD REVIEW AND RECOMMENDATION**

- (A) Upon receipt of a petition for an amendment, the Zoning Administrator shall forward the request to the Planning Board for its consideration.
- (B) The Planning Board shall review the proposed amendment and submit its recommendation to the Board of Commissioners. The Planning Board shall have 45 days within which to submit its recommendation. Failure of the Planning Board to submit its recommendation within this time period shall constitute a favorable recommendation.

**8-4 BOARD OF COMMISSIONERS REVIEW AND ADOPTION**

- (A) If the Planning Board recommends the adoption of a proposed amendment, the Zoning Administrator shall consult with the Clerk to the Board to establish and schedule a public

hearing before the Board of Commissioners on the petition. The public notice required for the public hearing shall be in accordance with Section 8-5.

- (B) If the Planning Board recommends against the adoption of a proposed amendment, the applicant may appear before the Board of Commissioners to request that a public hearing be held. If the Board of Commissioners refuses to schedule a public hearing, the amendment petition is summarily denied. If the Board of Commissioners agrees to schedule a public hearing, the public notice required for the hearing shall be in accordance with Section 8-5.
- (C) At the conclusion of a public hearing on the proposed amendment, the Board of Commissioners may proceed to vote on the proposed amendment, refer it to a committee for further study, or take any other action consistent with its usual rules of procedure.
- (D) The Board of Commissioners need not await the recommendations of the Planning Board before taking action on a proposed amendment nor is the Board of Commissioners bound by any recommendations of the Planning Board that are before it at the time it takes action on a proposed amendment.
- (E) The Board of Commissioners is not required to take final action on a proposed amendment within any specific period of time, but it should proceed as expeditiously as practicable on petitions for amendments since inordinate delays can result in the petitioner incurring unnecessary costs.
- (F) Voting on amendments to this Ordinance shall proceed in the same manner as other ordinances.

#### **8-5 PUBLIC HEARING REQUIREMENTS**

- (A) No ordinance that amends any of the provisions of this Ordinance may be adopted until a public hearing has been held on such ordinance.
- (B) The Clerk to the Board shall publish a notice of the public hearing on any ordinance that amends the provisions of this Ordinance once a week for two successive weeks in a newspaper having general circulation in the County. The notice shall be published for the first time not less than ten days nor more than twenty-five days before the date fixed for the public hearing. In computing this period, the date of publication shall not be counted but the date of the public hearing shall be.
- (C) With respect to map amendments, the Zoning Administrator shall provide first class mail notice of the public hearing to the record owners for tax purposes of all properties whose zoning classification is changed by the proposed amendment as well as the owners of all properties within 100 feet of the property rezoned by the amendment. The Zoning Administrator may also post notices of the public hearing in the vicinity of the property rezoned by the proposed amendment and take any other action deemed by the Zoning Administrator to be useful or appropriate to give notice of the public hearing.
- (D) The notice required in subsection (C) shall not be required if the zoning map amendment directly affects more than 50 properties, owned by a total of at least 50 different property owners. In this instance, the County shall publish once a week for four successive calendar weeks in a newspaper having general circulation in the area an advertisement of the public hearing that shows the boundaries of the area affected by the proposed zoning map amendment and that explains the nature of the proposed change. The

advertisement shall not be less than one-half of a newspaper page in size. The advertisement shall only be effective for property owners who reside in the area of general circulation of the newspaper that publishes the notice. Property owners who reside outside the town's jurisdiction or outside of the newspaper circulation area, according to the address listed on the most recent property tax listing for the affected property, shall be notified by mail pursuant to subsection (C). The person or persons mailing the notices shall certify to the Board of Commissioners that fact, and the certificates shall be deemed conclusive in the absence of fraud. In addition to the published notice, the County shall post one or more prominent signs immediately adjacent to the subject area reasonably calculated to give public notice of the proposed rezoning.

- (E) The notice required or authorized by this Section shall:
  - (1) State the date, time, and place of the public hearing;
  - (2) Summarize the nature and character of the proposed change;
  - (3) If the proposed amendment involves a change in zoning district classification, reasonably identify the property whose classification would be affected by the amendment;
  - (4) State that the full text of the amendment can be obtained from the Clerk to the Board; and
  - (5) State that substantial changes in the proposed amendment may be made following the public hearing.
- (F) The person or persons mailing notices to adjoining property owners, as defined in NCGS 153A-343, shall certify to the Board of Commissioners that fact.

#### **8-6 ULTIMATE ISSUE BEFORE BOARD OF COMMISSIONERS ON AMENDMENTS**

In deciding whether to adopt a proposed amendment to this Ordinance, the central issue before the Board of Commissioners is whether the proposed amendment advances the public health, safety or welfare. All other issues are irrelevant, and all information related to other issues at the public hearing may be declared irrelevant by the Chairman and excluded. When considering proposed map amendments:

- (A) Except for rezoning requests submitted in accordance with Section 8-7, the Board of Commissioners shall not consider any representations made by the petitioner that, if the change is granted, the rezoned property will be used for only one of the possible range of uses permitted in the requested classification. Rather, the Board of Commissioners shall consider whether the entire range of permitted uses in the requested classification is more appropriate than the range of uses in the existing classification.
- (B) The Board of Commissioners shall not regard as controlling any advantages or disadvantages to the individual requesting the change, but shall consider the impact of the proposed change on the public at large.

#### **8-7 CONDITIONAL USE DISTRICT REZONINGS**

- (A) There are circumstances in which a general zoning district designation allowing 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 this Ordinance and the adopted Land Development Plan. The review process established in this Section provides for the accommodation of such uses by a reclassification of property into a conditional use district, subject to specific conditions, which ensure compatibility of the use with the use and enjoyment of neighboring properties.

- (B) The conditional use district approval process is established to address those situations when a particular use may be acceptable but the general zoning district which would allow that use would not be acceptable. It allows the Board of Commissioners to approve a proposal for a specific use with reasonable conditions to assure the compatibility of the use with surrounding properties. Any use permitted under this process must also conform to the development regulations for the corresponding general zoning district. This is a voluntary procedure that is intended for firm development proposals. It is not intended or suited for securing early zoning for tentative proposals that may not be undertaken for some time. Uses that may be proposed and considered for a conditional use district shall be restricted to those uses permitted in the underlying general zoning district either by right or by conditional use permit. If the proposed use is one allowed by conditional use permit, it shall be reviewed and approved by the Board of Commissioners rather than the Board of Adjustment. Approval of a petition for conditional use district rezoning shall result in (i) the zoning classification being changed to the requested conditional use district designation and (ii) the issuance of a conditional use permit.
- (C) No conditional use district shall be established until after the person proposing the district has submitted a petition for the reclassification of property and the Board of Commissioners has approved such petition in accordance with the procedures delineated in Sections 8-2 through 8-4. Every petition for the reclassification of property to a conditional use district shall be accompanied by a site plan containing the requisite information specified in Appendix 1 and by an application for a conditional use permit. In the course of evaluating the proposed use, the Board of Commissioners may request additional information deemed appropriate to provide a complete analysis of the proposal.
- (D) The Board of Commissioners may approve the reclassification of property to a conditional use district only upon determining that the proposed use will meet all standards and requirements in these regulations that are applicable to the proposed use. In approving a petition for the reclassification of property to a conditional use district, the Planning Board may recommend and the Board of Commissioners may attach reasonable and appropriate conditions 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, road and right-of-way improvements, water and sewer improvements, stormwater drainage, the provision of open space, and other matters that the Board of Commissioners may find appropriate or that the petitioner may propose. Such conditions to approval of the petition may include dedication of any rights-of-way or easements for roads, water, sewer, or other public utilities necessary to serve the proposed development. Such conditions shall not include architectural review or controls. The petitioner shall have a reasonable opportunity to consider and respond to any such conditions prior to final action by the Board of Commissioners.
- (E) If a petition is approved under this Section, the district that is established, the approved petition, the approved conditional use permit, and all conditions which may have been attached to the approval are binding on the property as an amendment to this Ordinance

and to the zoning map. All subsequent development and use of the property shall be in accordance with the standards for the approved conditional district, the approved petition, and all conditions attached to the approval. Only those uses and structures indicated in the approved petition and site plan shall be allowed on the subject property. Any development in the district shall comply with all provisions of and conditions to the approved petition and site plan. Any uses and structures on the subject property shall also comply with all standards and requirements for development in the underlying general zoning district.

- (F) Following the approval of the petition for a conditional use district, the subject property shall be identified on the zoning map by the appropriate district designation. A conditional use district shall be identified by the same designation as the underlying general zoning district followed by the letters 'CU' [for example, B-2CU]. An accompanying conditional use permit shall be issued to the applicant upon approval of the petition.
- (G) Except as provided in subsection (H), changes to the approved petition or to the conditions attached to the approval shall be treated the same as amendments to this Ordinance or to the zoning map and shall be processed in accordance with the procedures in this Article.
- (H) Minor changes in the detail of the site plan which will not alter the basic relationship of the proposed development to surrounding properties or the standards and requirements of these regulations or to any conditions attached to the approval may be approved by the Zoning Administrator without going through the amendment process or a public hearing. The Zoning Administrator, at his discretion, may forward any application for changes in detail to the Board of Commissioners for its consideration as an amendment to this Ordinance or the zoning map. The applicant may appeal the decision of the Zoning Administrator to the Board of Adjustment for review and decision as to whether an amendment to the approved district shall be required.
- (I) It is intended that property shall be reclassified to a conditional use district only in light of firm plans to develop the property. Therefore, from the date of approval of the petition, the Zoning Administrator shall periodically examine the progress made toward developing the property in accordance with the approved petition and any conditions attached to the approval. If the Zoning Administrator determines that construction has not commenced or is not in accordance with the approved petition, site plan, conditional use permit, and conditions, the Zoning Administrator shall either initiate a reclassification of the property in accordance with the procedures established in this Article or shall forward a report to the Board of Commissioners recommending that the property be reclassified to the original zoning district or to another district.
- (J) After a certificate of occupancy has been issued for the development approved as a conditional use district, the Zoning Administrator shall periodically inspect the use and maintenance of the subject property to ensure continued compliance with this Ordinance, the approved petition and site plan, and any conditions attached by the Board of Commissioners to approval of the petition.

## **8-8 AMENDMENTS TO WATERSHED PROTECTION PROVISIONS**

The Zoning Administrator shall keep a record of all text amendments to this Ordinance which involve regulations, standards, or procedures regarding public water supply watersheds as outlined in Section 12-1. Copies of all such amendments shall, upon adoption, be provided to the Supervisor of the Classification and Standards Group, Water Quality Section, N.C. Division

of Environmental Management. Under no circumstances shall an amendment be adopted which would cause this Ordinance to violate the public water supply watershed rules as adopted by the N.C. Environmental Management Commission.

## **8-9 AMENDMENTS TO STORMWATER MANAGEMENT PROVISIONS**

Any and all amendments which involve regulations, standards, or procedures regarding stormwater management shall be approved by the North Carolina Department of Environment and Natural Resources, Division of Water Quality, prior to adoption. Under no circumstances shall an amendment be adopted which would cause this Ordinance to violate the minimum standards of the stormwater rule, 15A NCAC 2B .0258 Tar-Pamlico River Basin – Nutrient Sensitive Waters Management Strategy: Basinwide Stormwater Requirements, as adopted by the North Carolina Environmental Management Commission.

## **8-10 AMENDMENTS TO FLOOD HAZARD ZONING AND FLOOD HAZARD BOUNDARY MAP**

- (A) All requests for revisions of areas of special flood hazard boundaries and base flood elevations shall be reviewed and approved by the Federal Emergency Management Agency.
- (B) The existing location of any area of special flood hazard as defined in Section 12-2 may be amended in cases where:
  - (1) A flood control project of the federal, state, county or municipal government has substantially altered the flood hazard;
  - (2) Flood data indicates that the boundaries of either of the areas as shown on the official flood boundary and floodway map are no longer correct; or
  - (3) A private individual, corporation, firm or municipal agency has submitted plans for a channel improvement or relocation requiring an amendment to the official flood hazard boundary map.
- (C) Applications for an amendment to the official flood boundary and floodway map shall be processed in the same manner as an amendment to the official zoning map. The applicant shall be responsible for submitting the proposed amendment and supporting documentation to the Federal Emergency Management Agency (FEMA) for its approval. The application for flood zone map amendments shall be deemed incomplete if not accompanied by a letter of approval from FEMA.
- (D) All amendments to the official flood boundary map and floodway map shall be filed in accordance with NCGS 143-215.56(c).

## **8-11 PROTESTS TO ZONING DISTRICT CHANGES**

- (A) If a petition opposing a change in the zoning classification of any property is filed in accordance with the provisions of this Section, then the proposed amendment may be adopted only by a favorable vote of five-sevenths of the membership of the Board of Commissioners.
- (B) To invoke the five sevenths vote requirement, the petition must:
  - (1) Be signed by the owners of twenty percent or more either of (i) the lots included in a proposed change, or (ii) the lots within 100 feet of either side or the rear of the tract to be rezoned, or (iii) the lots directly opposite the tract to be rezoned and extending 100 feet from the road frontage of such opposite lots.

- (2) 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.
- (3) Be received by the Zoning Administrator in sufficient time to allow the County at least two normal working days before the date established for a public hearing on the proposed amendment to determine the sufficiency and accuracy of the petition.
- (4) Be on a form provided by the Zoning Administrator and contain all the information requested on this form.