

# ARTICLE 3

## ZONING AMENDMENTS AND HEARING PROCEDURES

### **SUMMARY/PURPOSE**

*This Article describes how to obtain a zoning amendment (either to the official zoning map or to the text) under the Concord Development Ordinance. Typically, this process involves either three or four steps:*

- A. First, an application is submitted to the Administrator.*
- B. Second, the Administrator determines whether the application is complete.*
- C. Third, the application is forwarded to the Planning and Zoning Commission for a public hearing. Depending on the whether the item is an amendment to the text or to the map, Council hearing may be required.*
- D. Fourth, a public hearing is held by the City Council and the amendment is either approved or denied.*

### TABLE OF CONTENTS

<b>Section</b>	<b>Page</b>
<b>3.1. PURPOSE AND AUTHORITY .....</b>	<b>2</b>
<b>3.2 CHANGES TO THE OFFICIAL ZONING MAP .....</b>	<b>3</b>
<b>3.3 ZONING TEXT AMENDMENTS .....</b>	<b>9</b>
<b>3.4 LEGISLATIVE HEARING PROCEDURES .....</b>	<b>10</b>

### **3.1. PURPOSE AND AUTHORITY**

The purpose of this Chapter is to outline the process for amending the classification of the official zoning map, the text of the ordinance and to outline the various processes for the City Council and for the Planning and Zoning Commission.

The City Council shall have the authority to amend or repeal the text of these regulations and the zoning classification of any parcel of land as indicated on the Official Zoning Map of the City of Concord.

## **3.2 CHANGES TO THE OFFICIAL ZONING MAP**

Changes to the zoning map (rezonings) occur through a public hearing conducted by either the Planning Commission, City Council, or in some instances, both.

### **3.2.1 PRE-APPLICATION MEETING**

Prior to filing a petition for a zoning amendment, the petitioner shall meet with the Planning Department staff to discuss the proposed amendment. The staff shall provide the petitioner with the proper application forms. The purpose of this meeting is to advise the petitioner of the zoning amendment process, notice issues (including neighborhood meeting requirement) and other concerns and information relative to the amendment of the zoning.

### **3.2.2 FILING OF PETITION**

A zoning amendment petition shall be on a form prescribed by the Planning Department and shall be accompanied by the fee established in the most recent budget ordinance adopted by the City Council. The Administrator shall establish schedules to file any application for development approval that requires action by the Planning and Zoning Commission, the Board of Adjustment or the City Council. Such applications shall be filed according to the established schedules in advance of any public hearing or public meeting required pursuant to this Ordinance or the N.C. General Statutes.

Applications for conditional district rezoning (Section 3.2.9) shall be initiated only by petition signed by the property owner, a person with property interest, or a contract to purchase the property.

For conditional district zoning amendment requests, after receipt of the petition, the staff shall forward the petition including the site plan to the Development Review Committee (DRC) for review and comments prior to the hearing. The site plan and supporting materials shall be in final approval form at least fifteen (15) days prior to the date of hearing in order to allow the staff adequate time to prepare a report for the Commission. At this time, the DRC shall concur that the site plan sufficiently meets minimum requirements prior to the item proceeding to the Planning Commission for public hearing.

A staff report, summarizing the petition, shall be prepared and posted to the City's website when complete.

### **3.2.3 NOTICE REQUIREMENTS**

Notice shall be given in accordance with Section 1.6 of this Ordinance.

**3.2.4 FORMALLY RECOGNIZED NEIGHBORHOOD ORGANIZATION NOTICE AND NEIGHBORHOOD MEETING REQUIREMENTS**

A. The petitioner shall notify 1) any neighborhood organization formally recognized by the City of Concord and 2) any homeowner’s association identified by the City, whose boundary is located within one-half (1/2) mile of any part of the boundary of the proposed zoning change. Such measurement shall exclude any intervening street or public right-of-way. At the time of filing the petition, the Planning staff shall provide the contact information for the formally recognized neighborhood and shall assist the petitioner in identifying other applicable homeowner’s associations.

The petitioner shall send notice to the organization and/or association by first class mail within ten (10) days of filing the petition and the notice shall include, at a minimum, a summary of the request including the anticipated hearing date, the site plan filed with the rezoning (if applicable) and the contact information for the petitioner. The petitioner shall provide proof of the notice to the Planning staff at least fifteen (15) days prior to the date of the public hearing. Failure to send notice to any homeowner’s association existing within the one-half (1/2) mile distance, but unknown to the City and therefore not identified for notice to the petitioner shall not be considered a violation of this section.

B. The petitioner shall conduct a neighborhood meeting with all adjacent property owners, for all proposed zoning amendments which increase density or intensity. The staff shall inform the petitioners of the neighborhood meeting requirement at the pre-application meeting. In lieu of the meeting, the petitioner may notice all adjacent property owners by letter, delivered by certified mail at least twenty (20) days prior to the hearing date. The letter shall provide an overview of the zoning request and shall include the petitioner’s contact information. Proof of the neighborhood meeting or the notification by certified letter shall be provided to the Planning Department no later than ten (10) days prior to the public hearing. When notice is given by mail, and persons representing ten percent or more of the entities noticed in accordance with 3.2.3 and 1.6 appear at the hearing in opposition to the petition, the Planning and Zoning Commission may table the matter and require the applicant to conduct the neighborhood meeting.

**3.2.5 APPROVAL AUTHORITY**

A. The Planning and Zoning Commission is hereby delegated by the City Council to have the authority to take final action on applications to rezone property as specified by Session Law 1993, Chapter 247, House Bill 575. The Commission may grant final approval of a zoning map amendment by a vote of at least three-fourths (3/4) of the members of the Commission present and not excused from voting. If the approval is by a vote of less than three-fourths, or if the Commission renders a recommendation of denial, the request shall be forwarded to the City Council for hearing at their next available meeting and

the City Council shall have the authority to make a final decision on the zoning map amendment.

**B.** Any person aggrieved by the decision of the Planning and Zoning Commission shall have the right to appeal the action to the City Council. The appeal shall be filed by giving notice in writing to the Administrator as designated by the City Manager within fifteen (15) days of the decision of the Planning and Zoning Commission. The City Council shall place the item on the next available City Council agenda.

**C.** Final Denial of an application for a zoning map amendment shall preclude the petitioner from submitting an identical petition for a zoning map amendment on the same property for a period of one (1) year from the date of final denial of the petition.

**D.** The decision of the proceeding, including statement of consistency, findings of fact and conclusions of law (if applicable) shall be filed in the Office of the Administrator and recorded at the Cabarrus County Register of Deeds, and a copy shall be provided to the petitioner.

### **3.2.6 STATEMENT OF CONSISTENCY WITH THE COMPREHENSIVE PLAN**

Prior to adopting or rejecting any zoning map amendment the Planning and Zoning Commission shall adopt a statement describing whether its action is consistent with an adopted comprehensive plan (including a land use plan, parks, greenways and bikeways master plan, and long-range transportation plan) and explaining why the Commission considers the action taken to be reasonable and in the public interest. A statement of reasonableness and consistency can be considered and approved as a single, combined statement.

If a written statement of consistency is not formally adopted, the minutes may be used to meet the requirement for plan consistency if the minutes reflect that the board was fully aware of and considered the comprehensive plan when making its decision.

### **3.2.7 PROTEST PETITIONS**

A protest petition, submitted in accordance with GS 160D-102 et seq., may only be filed for consideration by City Council. Protest petitions are not applicable for Planning and Zoning Commission consideration.

### **3.2.8 REZONING TO A CONVENTIONAL (BASE) ZONING DISTRICT**

The provisions of this section shall apply to any application for a zoning map amendment to Agricultural (AG), Rural Estate (RE), Residential Low Density (RL), Residential Medium Density (RM-1 or RM-2), Residential Village (RV),

Residential Compact (RC), Residential-County Originated (R-CO), Office & Institutional (O&I), Neighborhood Commercial (B-1), City Center (CC), Light Commercial (C-1), General Commercial (C-2), Light Industrial (I-1), General Industrial (I-2), as well as zoning districts specifically classified as overlay districts.

Hearings for conventional zoning districts shall be legislative in nature. Sworn testimony and findings of fact for approval or denial are not required. The Commission may not impose conditions on the approval, and the Commission may not consider any condition offered by the applicant.

### **3.2.9 REZONING TO A CONDITIONAL ZONING DISTRICT**

The provisions of this section shall apply to any application for a map amendment to “parallel” conditional district and to other conditional zoning districts as specified in Article 9 of this Ordinance unless those districts contain discretionary standards that may require a quasi-judicial procedure. The conditional zoning process allows particular uses to be established on case-by-case basis on a specific property. Some land uses are of a nature or scale that they have significant impacts on the surrounding property and potentially on the entire community, and these uses cannot be addressed by general district zoning standards. There are also circumstances in which a conventional zoning district designation allowing such a use by right may not be appropriate, even though the use itself, if properly planned, could be appropriate with the property and consistent with the objectives of these regulations and the adopted land use plans and small area plans, if applicable. The review process established herein provides for the accommodation of such uses by a reclassification of property into a “parallel conditional district.”

There are hereby established, in accordance with Section 7.2.3, Parallel Conditional Zoning Districts as follows: Agricultural Conditional District (AG-CD), Rural Estate Conditional District (RE-CD), Residential Low Density Conditional District (RL-CD), Residential Medium Density Conditional District (RM-1-CD or RM-2-CD), Residential Village Conditional District (RV-CD), Residential Compact Conditional District (RC-CD), Office & Institutional Conditional District (O&I-CD), Neighborhood Commercial Conditional District (B-1-CD), City Center Conditional District (CC-CD), Light Commercial Conditional District (C-1-CD), General Commercial Conditional District (C-2-CD), Light Industrial Conditional District (I-1-CD), and General Industrial Conditional District (I-2-CD).

Furthermore, the following zoning districts included in Article 9 are also established as Conditional Zoning Districts: Planned Unit Development (PUD), Planned Residential Development (PRD), Mixed Use (MX), Traditional

Neighborhood Development (TND), Public Interest District (PID) and Low Impact Development (LID).

**A.** Any use permitted under the conditional zoning process must conform to the corresponding conventional zoning district, or if applicable, to the requirements of Article 9. No use may be permitted that is not permitted within the conventional zoning district, or within the individual requirements specific to the above-referenced zoning districts contained in Article 9.

**B.** Amendments to conditional zoning districts may be initiated only by petition, and the petition shall be signed by the owners of all of the property within the proposed district.

**C.** A petition for conditional zoning must include a site plan, drawn to scale, with supporting information and text that specifies the actual use or uses intended for the property and any proposed conditions that will govern development and use of the property. The following information shall be provided, if applicable:

1. A boundary survey and vicinity map showing the property's total acreage, zoning classification(s), location in relationship to major streets, railroads, the date, and a north arrow;
2. All existing easements, reservations and rights-of-way;
3. Areas in which structures are proposed;
4. Proposed use of all land and structures including the number of residential units and square footage of nonresidential development;
5. Proposed and required screening and landscaping as specified in Article 11;
6. Existing and proposed points of access to public streets and to adjacent property;
7. Location of 100 year floodplains and location of proposed stream buffers as specified in Article 4;
8. General parking and circulation plans;
9. Additional data and information as specified in Article 9, if applicable.

**D.** In the course of evaluating the application, the Administrator, Planning and Zoning Commission or City Council may request additional information from the petitioner. This information may include the following;

1. The exterior features of the proposed development including height and exterior finish;
2. Existing and general topography of the site;
3. Existing vegetation and tree cover; and
4. Location and number of proposed signs.

The site plan and all supporting materials and text shall constitute part of the petition for all purposes under this Chapter.

**E.** Hearings for conditional zoning districts shall be legislative in nature. Sworn testimony and findings of fact for approval or denial are not required. The Commission or Council may suggest reasonable additional conditions or augment those proposed with the petition, but only those conditions mutually agreed upon by the petitioner and the Commission or Council may be incorporated into the approval. Any such condition 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 Commission or Council may find appropriate. Such conditions to approval of the petition may include dedication to the City or State as appropriate, any right-of-way for streets or other public utilities necessary to serve the proposed development. Other dedications and performance guarantees can be suggested and agreed upon as deemed appropriate by the Commission or Council. All conditions and development approvals should be in writing either in print or in an electronic format that is protected from further editing.

**F.** If a petition for conditional district zoning is approved, the conditions of approval shall become binding upon the property. Only those uses and structures indicated in the approved petition and site plan may be developed on the site. Furthermore, approval of the zoning amendment shall not authorize development activity on the site and proposed development will be subject to other provisions of this Ordinance and to applicable State and Federal regulations.

**G.** Approval of a petition for conditional district zoning shall constitute approval of the site plan submitted as part of the petition, in accordance with Section 5.4 of this Ordinance. Amendments to a site plan approved as part of a conditional district zoning plan shall be processed as a new conditional district zoning petition, according to the provisions of this Chapter, except that certain minor administrative amendments may be permissible as detailed in Section 3.2.6. H below.

**H.** A request for an administrative amendment shall be in the form of a letter, signed by the property owner and addressed to the Administrator (or designee) detailing the requested change. The Administrator may require additional information from the petitioner, and may, if necessary, consult with the Development Review Committee (DRC). The Administrator may approve the change upon finding that the proposed change is substantially similar to the approved plan. Changes that are not considered similar include:

1. Increasing the number of buildings;



2. Increasing the number of dwelling units or the approved density of the project;
3. Addition of access points to a public street;
4. Reducing number of parking spaces, landscaping, buffers or setbacks below minimum standards;
5. Moving proposed structures closer to adjacent residential properties or adjacent residential zoning;
6. Reducing open space; and
7. Increasing the mass or height of buildings.

The administrator shall respond, in writing, to the petitioner, either approving or denying the administrative amendment. The letter to the petitioner shall explain the reasons behind the approval or denial. In the event of denial, the petitioner may appeal the decision to the Zoning Board of Adjustment in accordance with Section 6.3 or may file a new conditional district zoning petition in accordance with this Article.

### **3.3 ZONING TEXT AMENDMENTS**

The purpose of this Section is to establish uniform procedures for processing amendments to the text of this Ordinance.

A. Any person, board, department, or commission may apply for a change in Concord Development Ordinance text.

B. An amendment to the text of this Ordinance may be initiated by filing an application with the Administrator. Before an application is accepted by the Planning Department, the applicant must meet with the Administrator. The purpose of the pre-application meeting is to discuss, in general, the procedures and requirements for a zoning text request. During this meeting, the Administrator will identify the submittal requirements, and advise the petitioner of the approval process.

C. The Planning Department shall prepare a summary of the proposed amendment and present the proposal to the Planning Commission at the next available meeting. The Commission shall vote to either 1) accept the amendment and to prepare an ordinance for their consideration at the next available meeting, or 2) deny the request and not accept the amendment. If the request is accepted, the petitioner shall pay the application fee, as specified in the most recent budget ordinance approved by the City Council. In the event that the application fee is not paid, the amendment shall not be scheduled for consideration by the Commission.

D. The Commission shall hold a public hearing on the proposed ordinance at their next available meeting. Upon an affirmative majority vote by the Commission, the amendment shall be forwarded to the City Council for a public hearing at their next available meeting. The City Council shall approve or deny the zoning text amendment by a majority vote. In the event that the request is denied, the Commission shall not hear another application for the same amendment within one year of the original consideration unless there is new and different evidence that was not reasonably available at the time of the original consideration.

E. In the event that the Commission votes to either not accept the amendment, or to not approve the prepared amendment, any person aggrieved by the decision shall have the right to appeal the action to the City Council. The appeal shall be filed by giving notice in writing to the Administrator within fifteen (15) days of the decision of the Planning and Zoning Commission. The City Council shall place the item on the next available City Council agenda.

F. High priority amendments to the text initiated by the staff, Planning Commission or City Council shall not be subject to the procedures detailed above, but shall be considered by City Council at the next available opportunity for hearing.

### **3.4 LEGISLATIVE HEARING PROCEDURES**

A. The purpose of a legislative or advisory review public hearing is to provide the public an opportunity to be heard. Unlike quasi-judicial hearings, a legislative proceeding does not require due process protections, such as right of the parties to offer evidence, sworn testimony, or findings of fact. Like quasi-judicial hearings, legislative hearings are public hearings preceded by notice to interested parties. Public hearings are required for legislative review hearings, such as amendments to the Comprehensive Plan, amendments to this Ordinance (including amendments to the text and most zoning map amendments)

B. Notice of hearing shall be provided in accordance with Section 1.6 of this Ordinance.

C. The body conducting the hearing shall record the minutes of the proceedings by any appropriate means as prescribed by rule and consistent with NCGS Chapter 132 Article 33C. The Administrator will provide the record upon request and payment of any fee applicable to production as set forth in the fee schedule adopted as part of the City's annual budget.