

## **11.4 Amendment Process**

### **.1 Purpose and Authority**

- a) The purpose of this article is to provide a means for amending the text of these regulations and the classification of any parcel of land identified on the Official Zoning Map. The purpose is not to relieve particular hardships, nor to confer special privileges or rights on any person, but only to make adjustments necessary in response to changed conditions or changes in public policy.
- b) Upon compliance with the provisions of this article, the Town Board shall have the authority to amend or repeal the text of these regulations or the classification of any parcel of land indicated on the Official Zoning Map.

### **.2 Planning Board**

- a) Establishment.

The Planning Board of the Town of Huntersville shall consist of eight (8) members who reside within the corporate limits, appointed by the Town Board, plus extraterritorial members determined as follows: the number of members appointed who reside in the extraterritorial zoning jurisdiction shall at a minimum meet the requirements of N.C.G.S. 160A-362 for proportional representation, but shall in no instance be less than two (2).

- b) Membership.

- 1) Members From Within the Town Limits.

Each member shall be appointed by the Town Board for a term of three years. In appointing the original members or in the filling of vacancies caused by the expiration of the terms of existing members, the Town Board may appoint certain members for less than three years to the end that thereafter the terms of all members shall not expire at the same time. The expiration date for each term shall be the 30th day of June of the year in which said term is to expire and the term of office of the succeeding member shall begin on the 1st day of July. If the original members are appointed such that their terms of office begin prior to a July 1 date, such terms of original members shall be extended by the period of time between their appointment and June 30 of the year of their appointment, it being the intent of this proviso that original members shall serve terms of one, two, or three years plus a period of time between their initial appointments and June 30 of the year of their initial appointments. A retiring member shall be eligible for reappointment to succeed himself. For purposes of this section, original appointments refer to members appointed upon first establishment of the Planning Board, and also to members appointed to newly created seats upon any expansion of the Planning Board.

- 2) Extraterritorial Members.

In addition to the members hereinabove provided for, members of the Planning Board shall be appointed from the area within the extraterritorial jurisdiction of the Town of Huntersville, pursuant to the appointment process prescribed in N.C.G.S. 160A-362. Members so appointed shall have all of the obligations and duties of the other members of the Planning Board, including rights to vote on all matters coming before the Board. Each extraterritorial member shall be appointed for a period of three years. Expiration dates for each term, initially and thereafter, shall be the 30th day of June of the year in which said term is to expire and the term of office of the succeeding member shall begin on the 1st day of July; provided further that if the original members are appointed such that their terms of office begin prior to a July 1 date, such terms of original members shall be extended by the period of time between their appointment and June 30 of the year of their appointment. Eligibility for reappointment shall be determined by the procedures and policies established by the appointing body.

3) Meetings.

Meetings shall be held on a monthly basis unless otherwise determined by the Board. The Chairman of the Board, or in his absence the vice chairman, may call a special meeting of the Board at any time by giving each member 24 hours notice. Special meetings shall also be scheduled upon request by a simple majority of board members. A quorum of the Board shall consist of a simple majority of the appointed members, and a quorum shall be in attendance before any action of an official nature can be taken.

4) Powers and Duties.

- (a) The Planning Board shall serve as the advisory board on all requests for changes in the zoning laws and ordinances of the Town of Huntersville. As such, and pursuant to any authorities set forth in the zoning ordinance, the Planning Board shall hear all requests for zoning changes or other zoning action and shall, upon such hearings, make a recommendation to the Town Board as to any requested changes or action regarding this ordinance. Hearings on zoning petitions may, by joint decision of the Town Board and the Planning Board, be held at joint meetings, or may be held separately. The Planning Board is hereby empowered to set procedures for the filing of zoning petitions so long as said procedures do not conflict with or are not in derogation of the then existing laws and ordinances of the Town of Huntersville.
- (b) The Planning Board shall review and make recommendations on applications for approval of subdivisions pursuant to the Subdivision Ordinance of the Town of Huntersville, and shall make such recommendations as may be permitted by said subdivision ordinance and as the Planning Board deems to be in the best interest of the town.
- (c) The Planning Board is empowered to make recommendations to the Town Board or other governmental agencies consistent with the Planning Board's charged obligation to provide for proper planning for the future growth of the Town of Huntersville and its environs.

### **.3 Initiation**

- a) Any amendment to the zoning text or map, except for the classification of property to a conditional zoning district or MH Overlay, may be initiated
  - 1) by the Town Board or the Planning Board on its own resolution;
  - 2) by the property owner(s), upon filing an official petition, submitting the fee established by the Town Board, and providing a list of adjoining properties including tax parcel numbers and the name and address of each owner, provided in digital form if possible;
  - 3) by someone other than the property owner following:
    - (a) filing of an official petition and submission of the established fee by the initiating party; and in addition, for a map amendment, providing a list of adjoining properties including tax parcel numbers and the name and address of each owner, or, for a text amendment, submitting the prepared text and rationale for seeking the amendment;
    - (b) preliminary evaluation by the Planning Board to evaluate consistency of the proposal with the objectives and policies of plans adopted by the Town of Huntersville; and
    - (c) determination by the Town Board whether the petition should be granted a public hearing or rejected.
- b) An amendment for the reclassification of property to a conditional zoning district or a MH Overlay district, may be initiated only by the owners of all of the property to be included in the district and shall be accompanied by an official petition, the established fee, and documentation as required by paragraph 1) below and as may be required by paragraph 2), below.

- 1) A petition requesting the reclassification of property to a conditional zoning district or overlay district must be accompanied by a site plan, drawn to scale, and any necessary supporting text, which shall include all data specified in paragraphs (a) through (n) below that are applicable to the project. Where the type of use or scale of proposal makes providing any of the following items unnecessary or impractical, the Planning Director may waive individual items.
    - (a) A boundary survey and vicinity map showing the property's total acreage, zoning classification(s), general location in relation to major streets, railroads, and/or waterways, date, and north arrow;
    - (b) Existing topography on the site and within 300 feet of the boundary of the site; and the general nature of the proposed topography at four foot contour intervals or less;
    - (c) All existing easements, reservations, rights-of-way, and any other restrictions on the use of the land;
    - (d) Number and general location of proposed structures;
    - (e) Proposed use of all land and structures, including the number of residential units or the total square footage of any nonresidential development;
    - (f) All yards, buffers, screening, and landscaping required by these regulations;
    - (g) Any screening, buffers, and landscaping proposed over and above that required by these regulations, as well as proposed treatment of any existing natural features;
    - (h) All existing and proposed points of access to public streets; the location of proposed new streets;
    - (i) Delineation of areas within the regulatory floodplain as shown on the Official Floodway Maps for Mecklenburg County;
    - (j) Proposed number and location of signs;
    - (k) Proposed phasing, if any, and approximate completion time for the project;
    - (l) The location of existing and proposed storm drainage patterns and facilities intended to serve the development;
    - (m) Traffic, parking, and circulation plans, showing the proposed location and arrangement of parking spaces and ingress and egress to adjacent streets, existing and proposed;
    - (n) A listing of adjoining properties including tax parcel numbers and the name and address of each owner, provided in digital form if possible.
  - 2) In the course of evaluating the proposed use, the Planning Director, Planning Board or Town Board of Commissioners may request additional information from the petitioner. Information requested may include the following:
    - (a) The location of significant trees on the petitioned property;
    - (b) Scale of buildings relative to adjoining properties, including sight lines;
    - (c) Height of structures;
    - (d) Exterior features of proposed development;
    - (e) Any other information needed to demonstrate compliance with these regulations.
  - 3) The site plan, building elevations, perspectives, sections, and any supporting text shall constitute part of the petition for all purposes under these regulations.
- c) The Planning Department shall determine the number of copies of each petition and other required documentation to be submitted by the petitioner so that copies may be circulated to all appropriate agencies for review and comment. A statement analyzing the reasonableness of the proposed

rezoning shall be prepared for each petition for a rezoning to a special or conditional use district, or a conditional district, or other small-scale rezoning.

- d) Before a public hearing may be held on a petition for a conditional zoning, the petitioner must file in the Office of the Town Clerk a written report of at least one community meeting held by the petitioner. Notice of such a meeting shall be given to all of the following, using the parcel ownership information listed in the current Mecklenburg County tax records:
  - 1) Owner of each property petitioned for rezoning
  - 2) Owner of each abutting property
  - 3) Owner of each property within 100 feet of the petitioned property
  - 4) Owner of each property directly across a street, easement, or right-of-way, public or private, from the petitioned property
  - 5) Owner of each property across a street, easement, or right-of-way, and within 100 feet of the right-of-way boundary opposite the petitioned property
  - 6) Contact person for each neighborhood association, property owner association, and homeowner association registered with the Town Planning Department that has jurisdiction over property within 2000 feet of any portion of the rezoning site (distance scaled on a Town of Huntersville or Mecklenburg County official map). If fewer than two registered associations are identified within 2000 feet of the rezoning site, it is the responsibility of the petitioner to identify and include unregistered associations or associations beyond 2000 feet of the site, such that no fewer than two neighborhood, property owner, or homeowner associations are notified of the community meeting.
  - 7) The report shall include, among other things, a listing of those persons and organizations contacted about the meeting and the manner and date of contact, the date, time, and location of the meeting, a roster of the persons in attendance at the meeting, a copy of any materials presented at the meeting, a summary of issues discussed at the meeting, including changes suggested by the participants and a description of any changes to the rezoning petition made by the petitioner as a result of the meeting. In the event the petitioner has not held at least one meeting pursuant to this paragraph, the petitioner shall file a report documenting efforts that were made to arrange such a meeting and stating the reasons such a meeting was not held. The adequacy of a meeting held or report filed pursuant to this paragraph shall be considered by the Town Board but shall not be subject to judicial review.

#### **.4 Withdrawal or Amendment of Petition**

- a) A petition filed according to this section may be withdrawn by the petitioner at any time up to adoption of a resolution by the Town Board scheduling the date of the public hearing on the petition.
- b) If the petitioner wishes to withdraw the petition after adoption of a resolution scheduling the public hearing, the petitioner may file a request to withdraw with the Town Clerk. On the date scheduled for the hearing, the Town Board may approve the request for withdrawal if it finds that there are substantial circumstances favoring the withdrawal and that the withdrawal will not be detrimental to the interests of citizens affected by the petition.
- c) Once the petition has been filed, the petitioner shall not be allowed to amend it except by request to the Planning Director no later than three weeks prior to the scheduled public hearing date. No changes to the petition shall be accepted in the intervening weeks prior to the public hearing. No changes to the petition shall be made at the hearing, although potential changes proposed by the petitioner, Planning Board, Town Board, and other interested parties may be presented at the hearing and considered by the Planning Board and Town Board during their deliberations.
- d) If the Town Board deems any amendment to be a substantial change to the petition, it shall defer action on the petition for 30 days to allow interested parties the opportunity to comment on the amendment to the petition.

- e) If the Town Board deems any amendment to be an intensification of the petition, it shall call a new public hearing as required by North Carolina General Statutes.

## **.5 Protested Zoning Amendment**

- a) Written protest against an amendment to the zoning classification of property, excepting amendments which initially zone property added to the territorial coverage of the ordinance, shall require a favorable vote of three fourths (3/4) of all members of the Town Board. For purposes of this subsection, vacant positions on the Town Board and members who are excused from voting shall not be considered 'members of the Town Board' for calculation of the requisite supermajority. Valid protest shall require one of the following conditions:
  - 1) If written protests are submitted by the owners of twenty percent (20%) or more of the area of the lots included in a proposed change; or
  - 2) If written protests are submitted by the owners of five percent (5%) of a 100-foot wide buffer extending along the entire boundary of each discrete or separate area proposed to be rezoned. A street right-of-way shall not be considered in computing the 100-foot buffer area as long as that street right-of-way is 100 feet wide or less. When less than an entire parcel of land is subject to the proposed zoning map amendment, the 100-foot buffer shall be measured from the property line of that parcel. In the absence of evidence to the contrary, the town may rely on the county tax listing to determine the 'owners' of potentially qualifying areas.
- b) To be valid and effective, protest letters shall:
  - 1) Be presented in writing; and
  - 2) Bear the signature and address of the protesting property owner; and
  - 3) State that the signer does protest the proposed amendment; and
  - 4) Be received by the Town Clerk at least two working days before the date established for a public hearing on the proposed amendment, in order to establish the sufficiency and accuracy of the petition.
- c) Any property owner may withdraw their protest at any time prior to the Board's vote on the rezoning petition. In order to withdraw signatures, the withdrawals must be in writing, identifying the rezoning protested against, and state that the submitted signatures have the purpose of deleting signers from the protest petition. Only those protest petitions that meet the qualifying standards set forth in GS 160A-385 at the time of the vote on the rezoning petition shall trigger the supermajority voting requirement. A withdrawn protest petition may not be reinstated after the deadline for filing protests set forth in (b) (4) above.

## **.6 Hearing**

- a) Notice of public hearings required under these regulations shall be in accordance with the North Carolina General Statutes.
- b) Conduct of Public Hearing.
  - 1) No amendment shall be adopted until after the Town Board has held a public hearing on the proposed amendment.
  - 2) The hearing shall be conducted in accordance with rules and procedures established by the Mayor and Town Board.
  - 3) When presenting a petition for the reclassification of property to a general district, the petitioner shall refrain from using any graphic materials or descriptions of the proposed use or development site design, except for those which would apply to any use or development site design permitted in the requested district.

## **.7 Recommendation and Decision**

- a) The Town Board may not vote to rezone property to a conditional zoning district during the time period beginning on the date of a municipal general election and concluding on the date immediately following the date on which the Town Board holds its organizational meeting following a municipal general election unless no person spoke against the rezoning at the public hearing and no valid protest petition under G.S. 160A-386 was filed. If a valid protest petition under G.S. 160A-386 has been filed against a zoning petition which would otherwise have been scheduled for a public hearing during the period beginning on the first day of October prior to a municipal general election, but prior to the new Town Board taking office, then the public hearing on such petition and any decision on such petition shall be postponed until after the new Town Board takes office.
- b) No proposed amendment shall be approved unless it is first submitted to the Planning Board for a recommendation. If the Planning Board does not make a written recommendation to approve, approve with conditions, deny, or defer a decision on the proposed amendment within 30 calendar days after the petition has been referred to it, then the Planning Board shall be considered to have recommended deferral for additional deliberation. The petition, along with the recommendation of the Planning Board, shall be placed on the agenda of the Town Board at its next regular zoning meeting.

In making its written recommendation, the Planning Board shall advise and comment on whether the proposed amendment is consistent with the adopted Huntersville Community Plan and other adopted long range plans that are applicable. The Planning Board shall provide a written recommendation to the Town Board that addresses plan consistency and other matters as deemed appropriate by the Planning Board, but a comment by the Planning Board that a proposed amendment is inconsistent with adopted plans shall not preclude consideration or approval of the proposed amendment by the Town Board.

- c) The Town Board, after receiving the recommendation of the Planning Board, shall within a reasonable time either reject the proposed amendment or approve the proposed amendment, with or without modifications. Property petitioned to be rezoned to a conditional zoning district may only be rezoned in response to and consistent with the petition of the owners of all of the property to be included in the district; therefore modifications to such petitions must be found to be consistent with the petition of all owners of property within the petitioned area prior to the Board's decision. Prior to adopting or rejecting any zoning amendment, the Town Board shall adopt a statement describing whether its action is consistent with adopted Huntersville Community Plan and other adopted long range plans that are applicable and explaining why the board considers the action taken to be reasonable and in the public interest. That statement is not subject to judicial review.
- d) In considering any petition to reclassify property, the Planning Board in its recommendation and the Town Board in its decision shall take into consideration any identified relevant adopted land-use plans for the area including, but not limited to, comprehensive plans, strategic plans, district plans, area plans, neighborhood plans, corridor plans, and other land-use policy documents.
- e) In considering any petition to reclassify property the Planning Board in its recommendation and the Town Board in its decision should consider:
  - 1) Whether the proposed reclassification is consistent with the overall character of existing development in the immediate vicinity of the subject property;
  - 2) The adequacy of public facilities and services intended to serve the subject property, including but not limited to roadways, transit service, parks and recreational facilities, police and fire protection, hospitals and medical services, schools, storm water drainage systems, water supplies, and wastewater and refuse disposal; and
  - 3) Whether the proposed reclassification will adversely affect a known archaeological, environmental, historical, or cultural resource.

- f) When considering a petition to reclassify property to a general district, the Planning Board and the Town Board shall not evaluate the petition based on any specific proposal for the use of the property or design of the site.
- g) In approving an amendment to reclassify property to a general district, or with the consent of the petitioner in the reclassification to a conditional zoning district, or MH Overlay district, the Town Board may change the existing classification of the property, or any part of the property covered by the petition, to the classification requested or to a classification or classifications between the existing and requested classifications, or to any higher classification in the hierarchy of zoning districts established in Section 3.1.1 of these regulations.
- h) In approving a petition to reclassify property to a conditional zoning district, specific conditions applicable to the conditional district may be proposed by the petitioner or the town or its agencies, but only those conditions mutually approved by the town and the petitioner may be incorporated into the zoning regulations or permit requirements. Conditions and site-specific standards imposed in a conditional district shall be limited to those that address the conformance of the development and use of the site to town ordinances, the officially adopted Huntersville Community Plan, other applicable adopted long range plans and those that address the impacts reasonably expected to be generated by the development or use of the site.
- i) The Town Board may modify any proposed text amendment upon adoption of an ordinance enacting the amendment, without the withdrawal or modification of the petition or further public hearings.
- j) An approved conditional zoning district petition and all conditions which may be attached to the approval are binding on the property. All subsequent development and use of the property must be in conformance with the conditional zoning district petition and all plans, specifications, and conditions established.
- k) In approving a conditional zoning district, the Town Board may modify standards established in the zoning or subdivision ordinance provided the spirit of the regulations are maintained.
- l) A conditional zoning district petition may be considered simultaneously with a subdivision sketch plan provided all submission and procedural requirements have been met.
- m) A Town Board member shall not vote on any zoning map or text amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. Members of appointed boards providing advice to the Town Board shall not vote on recommendations regarding any zoning map or text amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member.

## **.8 Effect of Denial of Petition**

- a) A petition for the reclassification of property that has been denied in whole or in part, or approved to a classification other than the one originally requested, shall not be re-submitted within one year of the date of the Town Board's action on the original petition, unless a petitioner applies for a district which is "lower" in the Hierarchy of Zoning Districts in Section 3.1.1.
- b) The Town Board may allow re-submission of a petition within the one-year restricted period if it determines that, since the date of action on the prior petition, one of the following criteria has been met:
  - 1) There has been a similar change in the zoning district classification of an adjacent property; or
  - 2) The Town Board has adopted a new or amended plan for the area that changes public policy regarding how the property affected by the amendment should be developed; or
  - 3) Construction or expansion of a road, water line, sewer line, or other infrastructure has occurred or is to occur in such a time frame as to serve the property and comfortably accommodate the intensity of development allowed under the proposed classification; or

- 4) There has been a substantial change in conditions or circumstances, outside the control of the petitioner, which justifies waiver of the one-year restriction on a new petition; this shall not include a change in the ownership of the subject property nor, in the case of a petition for reclassification to a conditional or parallel conditional zoning district, or MH Overlay district, a change in the scale or features of the development proposed in the prior petition.
- c) Any petition allowed by the Town Board under subsection (2) above must be reviewed and approved in accordance with the procedures and standards of Section 11.4, Amendment Process, of these regulations.

**.9 When Development Not Begun Within 3 Years**

It is intended that property shall be reclassified to a conditional zoning district or a MH Overlay district only in light of firm development plans for the property. Therefore, three years after the date of approval of any petition for a conditional zoning district, or MH Overlay district, the Planning Board shall examine the progress made toward developing the property in accordance with the approved petition and any conditions attached thereto. If the Planning Board determines that construction has not commenced in furtherance of the approved petition and conditions, the Planning Board may, at its discretion, initiate a rezoning to the general zoning district consistent with the most detailed plan adopted for the area which includes the property, according to the procedures of Section 11.4, Amendment Process.