

CHAPTER 18: TEXT/REZONING AMENDMENTS

SECTION 18.1: INTENT

The purpose of this Chapter is to set forth procedures for amending the text of these regulations and the zoning classification of land as shown on the 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 light of changed conditions or changes in public policy. Procedures for making amendments to the Land Development Code text or Zoning Map are also set forth.

SECTION 18.2: AUTHORITY

Upon compliance with the provisions of this Chapter, the Town Board shall have the authority to amend or repeal the text of these regulations and the classification of any parcel of land, as indicated on the Zoning Map.

SECTION 18.3: FILING OF PETITIONS

Any map or text amendment may be initiated by the Town Board or Planning Board on its own resolution, by any owner of a legal or equitable interest in the property affected by the amendment, or by a local government agency of Cornelius, or by any other person living or owning property within the zoning jurisdiction of Cornelius in accordance with the procedures set forth herein. However, in accordance with G.S. 160D-601 (d) no amendment to zoning regulations or a zoning map that down-zones property shall be initiated nor is it enforceable without the written consent of all property owners whose property is the subject of the down-zoning amendment, unless the down-zoning amendment is initiated by the Town.

For a re-classification of property or text amendment proposed by any person or entity other than the Planning Board or Town, or for petition to change the text of this Ordinance, such petition shall be on an application form prescribed by the Planning Department and accompanied by the fee established by the Town Board. Said application form and fee shall be filed with the Planning Department.

See Chapter 12 for general application submittal requirements and procedures for Town Board Review.

18.3.1: Content of Application Rezoning

- A. Each noncontiguous parcel of land for which rezoning is requested shall be deemed as a separate application, and said application fee shall accompany each application. For the purpose of this paragraph, land located on and adjacent to either side, to the rear, and all property directly across any street or public right-of-way from the subject property shall be deemed to be contiguous.
- B. Each application for a rezoning of land shall be accompanied by a map, drawn to scale, with the following information either shown on the map or accompanying it:
 1. The subject property plus such additional property as to show the location of the subject property with reference to the nearest street intersection, railroad, stream or other feature easily identifiable on the ground. In addition, all property lines which abut the property, and property owners' names and addresses of all contiguous properties shall be furnished.



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2. If the property is in a subdivision of record, a map of such portion of the subdivision that would relate the subject property to the closest street intersection, and in addition, the name of the subdivision and the plat addition and the names and addresses of all adjoining property owners (as indicated on the most up-to-date tax listings) shall be furnished.
3. A written metes and bounds description and a boundary survey of the property proposed for rezoning shall accompany the map.
4. The present and proposed zoning classification of the lot(s) in question.
5. The property identification number(s) of the lot(s) in question as issued by the Mecklenburg County Tax Department.

Text Amendments

An application for a change in the text of the Ordinance shall be made on an application form provided by the Planning Department. The application shall contain a reference to the specific section, subsection, paragraph or item proposed to be changed, as well as the wording of the proposed change, and the reasons therefore.

SECTION 18.4: INITIATION OF A REZONING (NOT CZ) OR TEXT AMENDMENT PETITION

When considering a petition for the re-classification of property to any district neither the Planning Board nor the Town Board shall evaluate the petition based on any specific proposal for the use or development of the affected property and the petitioner shall refrain from using any graphic materials or descriptions of the proposed use or development except for those which would apply to any use permitted in the requested district.

18.4.1: Review of Decisions

Every map or text amendment decision of the Town Board is a legislative process subject to review by the Superior Court Division of the General Courts of Justice of the State of North Carolina appropriately filed. Developer shall be responsible for proper and timely filing of such proceedings.

18.4.2: Re-Submission of Petition for Rezoning (Not Including Text Amendments)

- A. The Town Board shall not review any applications for the same map changes affecting the same property or any portion thereof until the expiration of one (1) year from the date of such previous denial.
- B. The Zoning Administrator may allow re-submission of such petition within said one (1) year period if it is determined that, since the date of the prior petition denial:
 1. There has been a significant change in the zoning district classification of an adjacent piece of property; or
 2. The Town Board has adopted a plan that changes public policy regarding how the property affected by the previous denial should be developed;



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3. Construction or expansion of a road, water line, sewer line, or other such facilities has occurred to serve the property and could adequately accommodate the intensity of development allowed under the proposed classification; or
4. There has been some other extraordinary change in conditions or circumstances, outside the control of the petitioner, which justifies waiver of the one-year restriction on a new petition; this, however, shall not include a change in the ownership of the subject property.

SECTION 18.5: CONDITIONAL ZONING DISTRICT (CZ)

Some land uses are of such a nature or scale that they have significant impacts on both the immediately surrounding area and on the entire community. There are also circumstances in which a general district designation allowing such 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 these regulations, the adopted "Land Use Plan", and/or other adopted plans. The development of these uses cannot be predetermined or controlled by general district standards.

Conditional Zoning Districts (CZ) may be utilized to accommodate such situations by reclassification of property into a Conditional Zoning district, subject to specific conditions, which ensure compatibility of the use with the use and enjoyment of neighboring properties. This Section establishes specific development standards for these uses, which allow for flexibility in development while protecting existing developed areas.

The rezoning process will apply to uses that are enumerated as "Conditional Zoning" in the "Table of Uses" in Section 5.4.2. Conditional Zoning shall be subject to the specific procedural rules of this chapter. Major Subdivisions that meet the eligibility standards of a Conditional Zoning District shall be reviewed and acted upon as part of the rezoning process specified within this Section of the ordinance.

18.5.1: Procedures For Conditional Zoning

Conditional Zoning districts are subject to predetermined ordinance standards, and the rules, regulations, and conditions imposed as part of the legislative decision creating the CZ district and applying it to the particular property.

A Conditional Zoning district is generally not intended for securing early zoning for a proposal, except when that proposal is consistent with an approved district or area plan or the proposal can demonstrate that public infrastructure needed to serve the development will be made available in a reasonable time period.

The conditional zoning process typically includes the following:

1. Community Meeting – this is the first opportunity for public input. This meeting is hosted by the developer.
2. Project Presentation and Public Comment – this is the second opportunity for public input and will be during a regularly scheduled Town Board meeting.
3. Planning Board Meeting – the Planning Board will hear from staff and the developer, as well as any citizen comments, on the proposed development to consider making a recommendation to the Town Board.



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4. Town Board Meeting – the Town Board will hold a legislative public hearing on the proposed development. This is the final opportunity for public input.

18.5.2: Content of Application

In addition to the specifications in 18.3.1, an application for the CZ rezoning of land to Conditional Zoning (CZ) shall be submitted in accordance with Chapter 13, Development Plan Specifications.

The Planning Director has the authority to waive any application requirement where the type of use or scale of proposal makes providing that information unnecessary or impractical.

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. This information may include the following:

- A. Proposed number and general location of all structures;
- B. Proposed screening, buffers and landscaping over and above that required by these regulations, as well as proposed treatment of any existing natural features;
- C. Existing and general proposed topography, if available, at four-foot contour intervals or less;
- D. The location of significant trees on the subject property;
- E. Scale of buildings relative to abutting property;
- F. Height of structures;
- G. Exterior features of proposed development;
- H. Any other information needed to demonstrate compliance with these regulations; and
 - I. Proposed number and location of signs.

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

18.5.3: Pre-Application Meeting/Site Visit

The Developer shall submit a sketch plan compliant with Section 13.4, Sketch Plan Requirements, and a general statement of development intent to the Planning Department for review as part of the pre-application meeting. The Planning Department will review with the Developer all the appropriate planning ordinances that are relevant to the project, including the Land Use Plan and any pertinent approved plans, and including the Conditional Zoning Communication Policy. The Planning Director or designee and the Developer will also visit the site to review general site conditions.

18.5.4: Required Community Meeting

Before a legislative hearing may be held on a petition for a Conditional Zoning district, the petitioner must file in the Planning Department a written report of at least one community meeting held by the petitioner at least one (1) month prior to proceeding to the Planning Board. Notice of such a meeting shall be given to the property owners and organizations within one-half (½) mile radius of the proposed development and are entitled to notice at least ten (10) days but no more than twenty-five (25) days in advance. Planning Staff will be responsible for the mailed notices. The report shall include, among other things, the date, time and location of the meeting, a roster of the persons in attendance at the meeting, a summary of issues discussed at the meeting, and a description of any changes to the



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rezoning petition made by the petitioner as a result of the meeting. Additionally, subsequent meetings should be held when deemed necessary at the discretion of the Planning Director or designee but will not require additional notification of neighbors. In the event the petitioner has not held at least one meeting pursuant to this subsection, 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 section shall be considered by the Town Board of Commissioners but shall not be subject to judicial review.

18.5.5: Approval of Conditional Zoning

Conditional zoning district decisions are a legislative process subject to judicial review using the same procedures and standard of review as apply to general use district zoning decisions. In considering any petition for a conditional zoning district, the Town Board of Commissioners shall act in accordance with the following procedures.

18.5.6: Conditional Zoning Review Process

Once the petition is complete, a community meeting has been held, the CZ request has been presented and the public has an opportunity to provide comment at a Town Board meeting, and completion and approval of a Traffic Impact Analysis, if necessary, except in accordance with Section 18.5.9, the CZ application process follows the Town Board review process in Section 12.8.

18.5.7: Conditions to Approval of Petition

In approving a petition for the reclassification of property to a conditional zoning district, the Planning Board may recommend, and the Town Board request, that reasonable and appropriate conditions be attached 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, street and right-of-way improvements, water and sewer improvements, storm water drainage, the provision of open space, or other development considerations; and, other matters that the Town Board may find appropriate or the petitioner may propose. Such conditions to approval of the petition may include dedication to the Town, County or State, as appropriate, of any rights-of-way or easements for streets, water, sewer, or other public utilities necessary to serve the proposed development. The petitioner shall have a reasonable opportunity to consider and respond to any such conditions prior to final action by the Town Board. Only those conditions mutually approved by the Board and the petitioner may be incorporated into the petition.

18.5.8: Effect of CZ Approval

- A. If a petition for conditional zoning is approved, the development and use of the property shall be governed by the predetermined ordinance requirements applicable to the conditional zoning district, the approved site plan for the district, and any additional approved rules, regulations, and conditions, all of which shall constitute the zoning regulations for the approved district and are binding on the property as an amendment to these regulations and to the Zoning Maps.



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- B. If a petition is approved, the petitioner shall comply with all requirements established for obtaining a building permit and certificate of occupancy. Only those uses and structures indicated in the approved petition and site plan shall be allowed to be permitted on the subject property and are to be constructed as shown on the approved petition and site plan.
- C. Following the approval of the petition for a Conditional Zoning district, the subject property shall be identified on the Zoning Maps by the appropriate district designation. A Conditional Zoning district shall be identified by the letters "CZ".

18.5.9: Alterations and Amendments to Approvals

Changes to an approved petition or to the conditions attached to the approved petition shall be treated the same as amendments to these regulations or to the Zoning Map and shall be processed in accordance with the procedures of this Chapter, except as indicated below.

Administrative amendment process:

- A. Application for an administrative amendment. Any request for an administrative amendment shall be pursuant to a written letter, signed by the Developer, to the Planning staff detailing the requested change. Upon request, the Developer must provide any additional information that is requested. Accompanying the letter shall be the required application and applicable fee.
- B. Authority to approve an administrative amendment. The Planning Director or designee shall have the delegated authority to approve an administrative amendment change to an approved site plan or to waive any procedural requirement as deemed appropriate in the Town Board review process. The standard for approving or denying such a requested change shall be that the change does not significantly alter the site plan or its conditions. The foregoing standards constitute changes to an approved site plan that cannot be considered through an administrative amendment:
 - 1. Changing the uses permitted
 - 2. Increasing the number of buildings
 - 3. Modifying the number of dwelling units.
 - 4. Reducing parking spaces below the minimum standards
 - 5. Reducing buffers or yards
 - 6. Moving structures closer to adjacent properties in a residential district or when abutting a residential use
 - 7. Reducing open space
 - 8. Increasing the mass of buildings

The Planning Director or designee, however, shall always have the discretion to decline to exercise the delegated administrative amendment authority either because the designee is uncertain about approval of the change pursuant to the standard, or because a rezoning petition for a legislative hearing and Town Board consideration is deemed appropriate under the circumstances. If the Planning Director or designee declines to exercise this authority, then the Developer can only file a rezoning petition for a legislative hearing and Board decision.

The Planning Director has the authority to waive any procedural requirement in the Board review process when such requirement is deemed unnecessary.



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Staff decision, notifications, appeal process:

1. If an administrative amendment is approved, appeals of decisions shall be subject to Section 16.5.1, Appeals of Administrative Decisions, and must be filed with the Planning Director or designee in writing.
2. If an administrative amendment is denied, then the Planning Director or designee shall send written notification of the denial to the Developer. The Developer shall have twenty-one (21) days from the date of the written notification to file an appeal of the decision with the Planning Director or designee.

If the denial is appealed, then the Planning staff shall send written notification of the appeal, per Chapter 16. The Board of Adjustment shall hear the denial appeal through a quasi-judicial process.

Board of Adjustment Appeal Process:

1. The Board of Adjustment shall hold a quasi-judicial hearing on the appeal. The Board may affirm, reverse, or modify the denial under appeal, making findings of fact and conclusions of law to support its decision.
2. Appeals of the Board of Adjustment decision may be made to Superior Court in accordance with applicable law.

18.5.10: Review of Approval of a Conditional Zoning District

It is intended that property shall be reclassified to a conditional zoning district only in the event of firm plans to develop the property. Therefore, no sooner than three years after the date of approval of the petition, the Town Board of Commissioners may examine the progress made toward developing the property in accordance with the approved petition and any conditions attached to the approval. If the Town Board of Commissioners determines that adequate progress has not been made in accordance with the approved petition and conditions, it may initiate rezoning the property to the appropriate classified general district following the general rezoning process outlined in in this Chapter, to the extent the property is not lawfully vested at such time.

18.5.11: Deactivation or Closure of a Conditional Zoning (CZ) Application

- A. If after a period of six months, no activity has occurred on an application, the application may be deactivated and closed. Activity shall be defined as follows:
 1. Submission of a plan for review or presentation; or
 2. Community Meeting; or
 3. A TIA or other required plan is in process of being prepared or reviewed; or
 4. Technical Staff Meeting or Committee Review; or
 5. A Board review
- B. After five (5) months of no activity, the Town shall notify the Developer that the six (6) month deadline is approaching. The Developer shall be notified of the two available alternatives for action with regard to the application:
 1. That activity on the application must occur for the application to remain active; or



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2. A double fee may be paid to keep the application active. If a second six-month period passes, a triple fee would be required to keep the application active. No refunds will be provided upon payment of a double or triple fee.
- C. The Developer may withdraw the application. If requested and/or warranted, any refund of application fees will be at the discretion of the Planning Director based on mailing and advertising costs to date.
- D. If no contact is made to the Town regarding an action noted above and the six (6) month deadline passes, the application shall be deactivated and closed with no application refund provided.
- E. Upon withdrawal or deactivation of any application, the Developer may file a new application with new fees being paid at any time. The application and review shall start from the beginning of the review process and be considered as a newly filed application.

SECTION 18.6: AMENDMENTS TO PARALLEL CONDITIONAL USE DISTRICTS

Any request to make an amendment to a Parallel Conditional Use District must follow the CZ rezoning procedures specified in Section 18.5.

