

ARTICLE 9 AMENDMENTS

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9.01 Amendments in General

9.01.01 Amendments to the text of this Ordinance (hereafter, “the UDO”) or to the Town’s officially adopted zoning map shall be made in accordance with the provisions of this Article.

9.02 Initiation of Amendments

9.02.01 Text and Map Amendment

A. Citizen/Property Owner Requests.

- 1. Text Amendments.** Any person may request that Council set a proposed text amendment for consideration at the next available public hearing. The petition shall be filed with the Administrator and shall include at a minimum: (i) the name, address, and phone number of the applicant, and (ii) a summary of the specific objective of any proposed change in the text of this Ordinance. Such request shall be scheduled for consideration at the next available regularly scheduled Council meeting.

The Administrator may, in his or her discretion, prepare a written analysis of the proposed text amendment to assist Council in consideration of whether to forward the amendment for public hearing. Any such analysis by the Administrator shall address the conformity of the proposed amendment with the Comprehensive Plan and other officially adopted plans of the town, as well as such other matters as the Administrator deems relevant.

- 2. Map Amendments.** Any person may petition for a map amendment by submitting the required fee and a petition in such form and including such information as may be required by the Administrator. A completed map amendment will be set for hearing at the next available public hearing.

The petition shall be filed with the Administrator and shall include at a minimum:

- a. The name, address, and phone number of the applicant;
- b. A description of the land affected by the proposed amendment;

- c. A description of the proposed map change; and
- d. In the case of a Conditional District map amendment, those items described at Subsection 9.02.02 below.

- B.** In addition to proposed amendments submitted per subsection (A) above, the drafting of proposed text amendments and consideration of any text or map amendment at a public hearing may proceed:
 - 1. Upon direction given by Council to staff either upon Council's own initiative or upon Council's consideration of a petition submitted pursuant to section (A) above; or
 - 2. Upon the initiative of the Administrator or the Town Attorney, with the concurrence of both.

9.02.02 Conditional District (CD) Map Amendments

- A.** A property may be placed in a CD only in response to a petition by the owners of all property to be included.
 - 1. No State owned property may be placed in a CD without prior approval by the Council of State.
- B.** The petition shall be filed with the Administrator and shall include at a minimum:
 - 1. The name, address, and phone number of the applicant,
 - 2. A description of the land affected by the proposed amendment, and
 - 3. A description of the proposed map change, and
 - 4. A site specific development plan and supporting documentation that specifies the actual use or uses intended for the property and any rules, regulations and conditions that, in addition to all predetermined Ordinance requirements, will govern the development and use of the property.

9.02.03 Council Consideration of Proposed Amendments

- A.** Upon consideration of a proposal to amend the UDO text or zoning map, Council may take any one or more of the following actions:
 - 1. Direct further consideration and/or development of the amendment by Staff and/or the Planning Commission,
 - 2. Authorize drafting of a proposed amendment if such has not already been drafted,
 - 3. Set the proposed amendment for public hearing and consideration by the Planning Commission, and/or
 - 4. Decline to authorize further consideration of the proposed amendment.
- B.** In the event Council directs a proposed amendment to be considered at a public hearing, such hearing may be scheduled at any such date, time and location as will allow proper notice to issue in advance of the hearing.

- C. No later than seven (7) days prior to the date set for the public hearing, the Administrator shall prepare an analysis of the proposed amendment to assist the Planning Commission and Council in determining the conformity of the draft amendment with this Ordinance, the Comprehensive Plan and any other officially adopted plan of the Town that relates to the proposed amendment.

9.02.04 Modification of Applications After Distribution of Agenda Packet

A. Modification of Petition Between Distribution of the Agenda Packet and the Public Hearing:

- 1. **Modification in Response to Administrator's Recommendation or Request:** An applicant may not significantly modify an application between the distribution of the Agenda Packet containing the Staff Report of the case and the public hearing unless the proposed modification is in direct response to a specific request or recommendation by the Administrator.
 - a. A proposed modification, even in response to the Administrator's recommendation or request, shall be submitted to the Administrator prior to the hearing in sufficient time for the Administrator to fully evaluate the impacts of the proposed modification.
 - b. If the Administrator determines that the applicant did not submit the proposed modification prior to the public hearing in sufficient time for the Administrator to fully evaluate the impacts of the proposed modification, the applicant will be given the choice between the public hearing being rescheduled until the next regularly scheduled public hearing or withdrawal of the proposed modification.
- 2. **Insignificant or Minor Modifications in a Petition:** An applicant may make a non-substantial modification to an application between the distribution of the Agenda Packet containing the Staff Report and the scheduled public hearing.
 - a. A proposed non-substantial modification shall be submitted to the Administrator prior to the public hearing in sufficient time for the Administrator to fully evaluate the impacts of the proposed modification. However, if an applicant proposes an insignificant modification to a petition during the scheduled hearing, and the Administrator indicates that adequate time exists to fully evaluate the impacts of the modification with or without a recess by the Council, the modified application may be acted upon by the Council.
 - b. If the Administrator determines that the petitioner did not submit the proposed modification prior to the public hearing in sufficient time for the Administrator to fully evaluate the impacts of the proposed modification, the applicant will be given the choice between the hearing being rescheduled until the next regularly scheduled public hearing or withdrawal of the proposed modification.

3. **Major Modification of an Application:** A petitioner seeking to significantly modify an application between the distribution of the Agenda Packet containing the Staff Report of the case and the public hearing, whether in response to Staff recommendations or self-initiated, must file a new application.
4. **Determination as to whether a Proposed Modification is Insignificant, Minor or Major:** The Planning Director shall make the determination as to whether a modification is “insignificant”, “minor” or “major” in accordance with Section 4.16. The determination of the Planning Director shall constitute the final decision of the Town and is not appealable.

C. Modification of Petition In Response to Concerns & Issues Raised at the Hearing

1. In response to questions or comments by persons appearing at the hearing or to suggestions or recommendations by the Board an applicant may agree to modify an application, including the plans and specifications submitted.
2. Unless such modification is so substantial or extensive that the Council cannot reasonably be expected to perceive the nature and impact of the proposed change without revised plans before it, the Council may approve the petition with the condition that the permit will not be issued until plans reflecting the agreed upon changes are submitted and approved by the Administrator.

(Ord. 20150028, 11-19-2015; Ord. 20150149, 05-19-2016; Ord. PL00421-041017, 05-18-2017; Ord. PL01265-011618, 03-22-2018; Ord. PL02333-030719, 05-09-2019)

9.03 Hearing Required: Conduct of Hearing; Notice of Hearing

9.03.01 Hearing Required

- A. Text, General, and Conditional District Map Amendments are a legislative processes subject to judicial review.
- B. No action that amends or repeals any of the provisions of this Ordinance may be adopted until a public hearing has been held on such.

9.03.02 Conduct of Hearing

- A. The Council and Planning Commission shall meet in joint session to hold the public hearing, and a quorum of each body must be present.
- B. Public hearings on proposed amendments shall be conducted in accordance with the meeting schedule adopted by Council, so long as there are items for consideration.
- C. A record of the public hearing will be prepared by Staff and minutes of the hearing submitted to the Planning Commission and Council as soon as practical following the public hearing.
- D. Public hearings shall be conducted in accordance with rules for the hearing adopted by the Council.
- E. The Mayor or other presiding officer may, at a minimum:

1. Limit the length of time for each speaker, and
 2. Require the designation of a spokesperson for groups of persons supporting or opposing the proposed amendment for the same reasons, and
 3. Provide for the maintenance of order and order the removal from the hearing room of any person attempting to disrupt the hearing or to intimidate or belittle other speakers, and
 4. Limit the number of persons in the hearing room at any one time, insofar as the number of persons wishing to attend the hearing exceeds the safe capacity of the hearing room.
- F.** Public hearings shall be conducted as follows except as otherwise directed by Town Council:
1. The applicant or other proponent of the proposed amendment shall present the requested amendment and answer questions posed by Planning Commission and Town Council members.
 2. Town staff (if not the proponent of the amendment) shall comment upon the proposed amendment and answer questions posed by Planning Commission and Town Council members.
 3. Any other persons wishing to speak on the proposed amendment shall be given an opportunity to do so and to answer questions posed by Planning Commission and Town Council members.
 4. The meeting shall then be opened to comment and discussion by and among Planning Commission and Town Council members, who also may in their discretion seek further information from or otherwise involve Town staff, the applicant, and any other interested persons in the discussion.
- G.** Town Council and Planning Commission member shall endeavor to use the public hearing as a forum to voice and address concerns about the proposed amendment, so that each body can have the benefit of understanding the views and concerns of members of the other body.
- H.** In the case of Conditional District zoning applications, Town Council and Planning Commission members shall endeavor to use the public hearing as a forum to explore possible conditions that could be placed on the proposed development with the agreement of the applicant.

9.03.03 Hearing Notice

- A. Legal Ad:** For all amendments, the Administrator shall publish a notice of the public hearing no less than once a week for two (2) successive weeks in a newspaper having general circulation in the area.

1. The notice shall be published for the first time not less than ten (10) days nor more than twenty-five (25) days before the date fixed for the hearing.
 2. In computing this period, the date of publication shall not be counted but the date of the hearing shall be.
- B. Adjacent Property Owner Notification:** With respect to General and Conditional District map amendments, the Administrator shall mail written notice of the public hearing by first class mail to the owners, as shown on the listings of the Watauga County Tax Administration, of all properties whose zoning classification will be changed by the proposed amendment and owners of properties for which any portion is within 150 feet of the subject property.
1. Each notice shall be deposited in the mail at least ten (10) but not more than twenty-five (25) days prior to the date of the public hearing.
 2. The person mailing such notices shall certify to the Council that fact, and such certificate shall be deemed conclusive in the absence of fraud. The certificate of mailing shall be included in the Administrator's analysis of the proposed petition to the Council and Commission.
 - a. However, if the proposed zoning map amendment directly affects more than fifty (50) properties owned by a total of at least fifty (50) different property owners, the Council may direct notification, instead of by the aforesaid individually mailed notices, by publication of the notice described above, supra, alone, but the notice must be not less than one-half a newspaper page in size and must be supplemented by individual notices by first class mail to property owners who reside outside the newspaper circulation area, according to the addressees listed on the most recent property tax listing for each affected property.
- C. Posting:** With respect to General and Conditional District Map Amendments, the Administrator shall also post notices of the public hearing on the site proposed for rezoning or on an adjacent public street or highway right of way within at least ten (10) but not more than twenty-five (25) days prior to the date of the public hearing.
1. When multiple parcels are included within a proposed zoning map amendment, a posting on each individual parcel is not required, but the Administrator shall post sufficient notices to provide reasonable notice to interested persons.
 2. In addition, the Administrator shall take any other action deemed by the Council or Administrator to be useful or appropriate or desirable to give notice of the public hearing.
- D. Every notice required by this Section shall:**
1. State the date, time, and place of the public hearing, and

2. Summarize the nature and character of the proposed change, and
3. Reasonably identify the property whose zoning classification would be affected by the amendment if the proposed amendment involves a change in zoning district classification, and
4. State that the full text of the proposed amendment can be obtained from the Town Clerk, and
5. State that substantial and insubstantial changes in the proposed amendment may be made following the public hearing.

(Ord. 20150028, 11-19-2015; 20160149, 05-19-2016; Ord. PL01265-011618, 03-22-2018; Ord. PL01809-08218, 10-16-2018; Ord. PL02455-041619, 06-27-2019)

9.04 Citizen Comment

9.04.01 If any resident or property owner in the Town submits a written statement regarding a proposed amendment, modification, or repeal to a zoning ordinance to the clerk to the board at least two (2) business days prior to the proposed vote on such change, the clerk to the board shall deliver such written statement to Council.

(Ord. 20150028, 11-19-2015; Ord. 20160027, 05-19-2016)

9.05 Planning Commission Consideration of Proposed Amendments

9.05.01 A proposed amendment shall be deemed submitted to the Planning Commission for review and comment upon the holding of the public hearing on the proposed amendment as provided at Section 9.03. Following the public hearing, the Planning Commission, may proceed to consider the proposed amendment:

- A. In that same meeting,
- B. At its next regularly-scheduled meeting and/or
- C. At a subsequent special meeting, so long as proper notice is given thereof.

9.05.02 The Planning Commission may not reopen a public hearing or hold a second public hearing except as approved by Town Council.

9.05.03 The Planning Commission may at any time in connection with its review and recommendation duties seek additional information from Town Staff, and such shall not be deemed the reopening or holding of a public hearing.

9.05.04 The Commission shall endeavor to provide a written report and written recommendation to the Council within 30 days of the public hearing. However, the Commission may apply to Council for an extension of time to submit its recommendations.

- A. The Commission shall specifically advise and comment on whether the proposed amendment is consistent with the Comprehensive Plan and other officially adopted plans that are applicable and whether the Commission recommends adoption of the proposed amendment.

- B. In its report to the Council, the Commission may comment, as it deems appropriate, on any matter related to the proposed amendment. By way of example and without limiting the foregoing, in the case of a proposed text amendment, the Commission may propose changes to the proposed text; and in the case of a Conditional District rezoning application, the Commission may propose that one or more conditions be requested by Council.

9.05.05 Rather than or in addition to making its written report, the Commission may recommend to Council that a second public hearing be held on the amendment in order to gather additional public comment or other information. Such a request shall not, however, preclude the Council from acting on the amendment once 30 days have elapsed from the initial public hearing. If Town Council approves a second public hearing, the Planning Commission shall have 30 days from the date of that second public hearing to make a written report to Town Council, and the Town Council shall not act on the application until that 30 days has elapsed.

9.05.06 No member of the Commission shall participate in the discussion or vote on any recommendations regarding any 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.

(Ord. 20150149, 05-19-2016; Ord. PL01298-02022018, 04-19-2018; Ord. PL02455-041619, 06-27-2019)

9.06 Council Action on Amendments

9.06.01 Council Action After Referral to the Commission:

- A. At any meeting following the receipt of a written report and recommendation from the Commission or after thirty (30) days following the public hearing on a proposed amendment if the Commission fails to submit a written report, the Council may proceed with its consideration of the proposed amendment. Council may:
 1. Adopt the proposed amendment; or
 2. Adopt the proposed amendment with modifications; or
 3. Reject the proposed amendment; or
 4. Continue its consideration of the amendment to a later meeting date; or
 5. Refer the proposed amendment back to Staff and/or the Planning Commission for such further consideration as Council may direct, including but not limited to a second public hearing.
- B. The Council should endeavor to take action no later than sixty (60) days after the Commission submits its written recommendation.
- C. A comment by the Commission that a proposed amendment is inconsistent with the comprehensive plan shall not preclude consideration or approval of the proposed amendment by the Council.

- D. The Council is not bound by any other recommendation of the Planning Commission, including a recommendation that the proposed amendment be rejected.
- E. In the event Council fails to act on a proposed amendment within ninety (90) days of submission of the Commission's recommendation, such action shall be deemed a denial of the proposed amendment.

9.06.02 When adopting or rejecting any UDO text or map amendment, the Council shall adopt a statement describing whether its action is consistent with the Comprehensive Plan and other officially adopted plan that is applicable and explaining why the Council considers the action taken to be reasonable and in the public interest. That statement is not subject to judicial review.

9.06.03 A proposed amendment submitted by an applicant may be withdrawn by the applicant at any time prior to final Town Council action on the application.

- A. If an applicant fails to pursue the application for a period of six (6) months thereafter, the application shall be deemed to have expired.

(Ord. 20150149, 05-19-16; Ord. 20160149-05192016: Ord. PL01298-02022018, 04-19-2018; Ord. PL02455-041619, 06-27-2019)

9.07 Ultimate Issue Before Council on Amendments

9.07.01 In deciding whether to adopt a proposed amendment to this Ordinance, the central issue before the Council 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 Mayor and be excluded. In particular, when considering proposed general use map amendments:

- A. The Council 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 Council 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 Council shall only consider the impact of the proposed change on the public at large.

9.08 Action Subsequent to Council Decision

9.08.01 The Administrator shall notify the petitioner of the disposition of the amendment petition and file a copy of the decision in the office of the Planning and Inspections Department.

9.08.02 Any amendments pertaining to watershed protection must be filed with the North Carolina Division of Water Quality, North Carolina Division of Environmental Health, and the North Carolina Division of Community Assistance.

9.08.03 In the case of approval of an amendment, all necessary changes to the Ordinance or zoning map shall be entered within fifteen (15) working days of the effective date of the amendment. The Administrator shall authenticate the entry of each amendment and shall maintain a record of the nature and date of the amendment.

9.09 Conditional Districts (CD)

9.09.01 The authorization of a Conditional District (“CD”) for any use which is permitted only as a special use in the zoning district which corresponds to the conditional district shall preclude any requirement for obtaining a special use permit for any such use from the Board of Adjustment.

9.09.02 All variances proposed by the petitioner must be obtained from the Board prior to the scheduling of the public hearing for the CD.

9.09.03 **Transitional Zones.** Any proposed CD development within a transitional zone is subject to the standards and requirements of 6.02.02 herein.

9.09.04 Specific conditions applicable to a CD may be proposed by the applicant or the Town or its agencies, but only those conditions mutually agreed upon by the Town and the applicant may be incorporated into the permit requirements.

- A.** Conditions and site-specific standards imposed in a CD shall be limited to those that address the conformance of the development and use of the site to Town Ordinances and the comprehensive plan or other plan and those that address the impacts reasonably expected to be generated by the development or use of the site.
- B.** Town Council members and the applicant shall endeavor to discuss and agree to conditions as part of the public hearing process provided at Section 9.03; notwithstanding the foregoing, proposed conditions may be discussed or negotiated at any time that Town Council is considering the proposed application.
- C.** The applicant shall forthrightly answer any request by a Town Council member to agree to a proposed condition. Before doing so, however, the applicant may request continuance of the meeting or postponement of the applicant’s response until a subsequent meeting so that the applicant may further consider the requested condition before making a response. Such request for delay in responding may be granted by a consensus of the Town Council or, there being none, majority vote. Town Council shall continue or postpone the meeting to the next available public hearing or such earlier meeting as it shall deem appropriate.
- D.** An applicant’s refusal to answer a request to agree to a proposed condition shall be deemed a withdrawal of the application per Subsection 9.06.03.

E. After the Town has published the notice of public hearing for the application, the applicant shall make no changes to the conditions or site specific standards that are less restrictive than those stated in the application, including but not limited to smaller setbacks, more dwelling units; greater height; more access ways; new uses; and fewer improvements. More restrictive conditions or additional conditions may be added to the application if such conditions are received by the Planning Department in writing and signed by all owners of the property at least ten (10) business days before the date scheduled for final Town Council action on the application.

9.09.05 Changes to an approved petition or to 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 as a new application.

A. Except for a proposed minor modification to a previously approved CD, no proposal to amend or change any CD may be accepted nor considered within twelve (12) months of the date of the original approval of the CD or within twelve (12) months of a hearing upon any previous proposal to amend or change the CD.

B. A minor modification is one which does not significantly change the essential character of the use or activity that has been previously authorized through the CD zoning approval.

C. The Administrator shall determine whether a proposed modification to a previously approved CD is a minor modification, and the determination of the Administrator shall constitute the final decision of the Town and is not appealable.

9.09.06 If a petition for a CD is approved, a copy of the approval and all conditions relative to the approval, including site specific development plan(s), shall be kept on file in the Planning and Inspections Department office. A copy of the approval will also be recorded with the Watauga County Register of Deeds.

9.09.07 Should, by the end of the applicable vesting period, the property fail to develop in accordance with the terms and conditions of the CD approval, no subsequent use of the property shall be permitted without a new petition for zoning map amendment being filed.

9.09.08 Should a petition for a CD be denied, then no new petition for making similar use the same property shall be considered within twelve (12) months of the date of the original denial.

9.09.09 If for any reason any condition imposed pursuant to these regulations is found to be illegal or invalid, or if the applicant should fail to construct an approved site specific development plan in accordance with any condition agreed upon in the rezoning process, the authorization of the CD shall be null and void and of no effect and proceedings shall be instituted to rezone the property.

(Ord. 20150028, 11-19-2015; Ord. 20160178, 06-16-2016; Ord. PL02335-030719, 05-09-2019; Ord. PL02455-041619, 06-27-2019)

9.10 Reserved

(Ord. 20150028, 11-19-2015; Ord. 20160178, 06-16-2016; Ord. PL01265-011618, 03-22-2018)

9.11 Previously Approved Conditional Use Zoning Districts

9.11.01 Applications for amendments to the use of property currently subject to the terms and conditions of a previously approved conditional use zoning district will be processed as new conditional district applications.