

## Article XXI Amendments

### Section 378. Amendments in General

**[a]** 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.

**[b]** The term major map amendment shall refer to an amendment that addresses the zoning district classification of five or more tracts of land in separate ownership or any parcel of land (regardless of the number of lots or owners) in excess of fifty (50) acres. All other amendments to the zoning district map shall be referred to as a minor map amendment.

### Section 379. Initiation of Amendments

**[a]** Within the Municipal Government of the Town of Boone, including staff, officers, boards, commissions, task forces, advisory bodies, committees, and other such entities, only the Council may initiate an amendment to this ordinance (hereafter, “staff and other Town entities”). Staff and other Town entities, when they are charged or empowered with making recommendations to the Town Council regarding the text of the UDO, may make recommendations regarding potential desired changes to the UDO to the Council, but the preparation of the text of a proposed draft amendment shall only proceed after the Council has endorsed the policy objectives sought to be achieved with the recommendation and has acted to authorize preparation of a draft text amendment.

**[b]** Whenever a request to amend this ordinance is initiated or authorized by the Council, the Town Attorney in consultation with the Administrator shall determine whether the proposed amendment represents substantive planning policy or procedural matters, such as enforcement procedures, amendment procedures and appeal procedures.

- [1] If the Town Attorney determines the proposed amendment represents a substantive planning policy, the Administrator shall draft the text of the proposed amendment in consultation with the Town Attorney. Before an amendment drafted by the Administrator is presented to the Council for consideration, the Town Attorney shall endorse and date the draft amendment with the following statement: Approved as to Form this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, \_\_\_\_\_, Town Attorney.

- [2] If the Town Attorney determines the proposed amendment represents a procedural matter, the Town Attorney shall draft the text of the proposed amendment in consultation with the Administrator. Before an amendment drafted by the Town Attorney is presented to the Council for consideration, the Administrator shall endorse and date the draft amendment with the following statement: Approved as to Planning Policy this \_\_\_\_ day of \_\_\_\_\_ 20\_\_, \_\_\_\_\_, Administrator.

**[c]** Any other person may petition the Council to amend this ordinance. The petition shall be filed with the administrator and shall include, among the information deemed relevant by the administrator:

- [1] The name, address, and phone number of the applicant,
- [2] A description of the land affected by the proposed amendment if a change in zoning district classification is proposed,
- [3] Stamped envelopes containing the names and addresses of all those to whom notice of the public hearing must be sent as provided for in Section 380, and
- [4] A description of the proposed map change or a summary of the specific objective of any proposed change in the text of this ordinance.

**[d]** Upon receipt of a petition as provided in Subsection [c], the administrator shall either:

- [1] Treat the proposed amendment as one requested by the staff and other Town entities, and proceed in accordance with Subsection [a] if the Administrator believes that the proposed amendment has significant merit and would benefit the general public, or
- [2] Forward the petition to the Council with or without written comment for a determination of whether a draft amendment should be prepared in accordance with subsection [b].

**[e]** Upon receipt of a draft amendment, should the Council act to proceed with its consideration, it shall establish a date for a public hearing on it. The public hearing may be scheduled at a pre-arranged date, time and location, such as at a “quarterly public hearing,” or at such other date, time and location authorized by the Council which will allow proper notice to issue in advance of the hearing.

**[f]** No later than seven (7) days prior to the date set for the public hearing, the Administrator shall prepare an analysis of the proposed petition (hereafter, “the Section 379[f] report”) to assist the Planning Commission and Council in determining the conformity of the draft amendment with the Comprehensive Plan and any other officially adopted plans of the Town which relate to the proposed amendment.

### **Section 380. Hearing Required: Conduct of Hearing; Notice of Hearing**

**[a]** No action that amends or repeals any of the provisions of the UDO may be adopted until a public hearing has been held on such.

**[b]** The Council and Planning Commission shall meet in joint session to hold the public hearing, and a quorum of each body must be present. Public hearings on proposed ordinance amendments will be scheduled no less frequently than on a quarterly basis in February, May, August and November. 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. Public hearings shall be conducted in accordance with rules for the hearing adopted by the Council. The Mayor or other presiding officer may, at a minimum, limit the length of time for each speaker, require the designation of a spokesperson for groups of persons supporting or opposing the proposed amendment for the same reasons, provide for the maintenance of order and order the removal from the hall of any person attempting to disrupt the hearing or to intimidate or belittle other speakers, and limit the number of persons in the hall at any one time, insofar as the number of persons wishing to attend the hearing exceeds the safe capacity of the hall.

**[c]** 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. 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. In computing this period, the date of publication shall not be counted but the date of the hearing shall be.

**[d]** With respect to 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 Administrator, of all properties whose zoning classification will be changed by the proposed amendment and owners of properties for which any portion is within one hundred fifty (150) feet of the subject property. 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. 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 Section 379[f] report to the Council and Planning Commission. 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 in subsection [c], *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.

**[e]** 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. 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. 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.

**[f]** Every notice required by this section shall:

- [1] State the date, time, and place of the public hearing,
- [2] Summarize the nature and character of the proposed change,
- [3] Reasonably identify the property whose zoning classification would be affected by the amendment if the proposed amendment involves a change in zoning district classification,
- [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.

### **Section 381. Protest to Zoning District Changes (used to be Section 384)**

**[a]** If a petition opposing a change in the zoning classification of any property is filed in accordance with the provisions of this section, then the proposed amendment may be adopted only by a favorable vote of three-fourths of the Council. For the purposes of this section, vacant positions on the Council and members who are excused from voting shall not be considered for calculation of the requisite supermajority.

**[b]** To trigger the three-fourths vote requirement, the petition must meet all of the following:

- [1] Be signed by the owners of either (I) twenty percent (20%) or more of the area included in the proposed change or (ii) 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. When there are multiple owners of a single parcel, all owners must sign the protest petition for the parcel to be included in the calculation of the amount of property represented by the protest petition.
- [2] Be in the form of a written petition actually bearing the signatures of the requisite number of property owners and stating that the signers do protest the proposed change or amendment.
- [3] Be received by the Town Clerk in sufficient time to allow the town at least two normal working days, excluding Saturdays, Sundays and legal holidays, before the date established for a public hearing on the proposed amendment to determine the sufficiency and accuracy of the petition.
- [4] Be on a form provided by the Town Clerk and contain all the information requested on this form.

**[c]** A person who has signed a protest petition may withdraw his or her name from the petition at any time prior to the vote on the proposed zoning amendment.

**[d]** Only those protest petitions that meet the qualifying standards set forth at the time of the vote on the zoning amendment shall trigger the supermajority voting requirement.

**[e]** A protest petition shall not be applicable to any amendment which initially zones property added to the territorial coverage of the Town as a result of annexation or otherwise, or to an amendment to an adopted conditional district if the amendment does not change the types of uses that are permitted within the district or increase the approved density for residential development, or increase the total approved size of nonresidential development, or reduce the size of any buffers or screening approved for the conditional district.

**[f]** If a petition opposing a change in the zoning classification of any property is filed in accordance with the provisions of this section, the

Administrator shall announce to the Planning Commission and Council receipt of such petition prior to accepting public comment at the public hearing.

### **Section 382. Planning Commission Consideration of Proposed Amendments**

**[a]** At its next meeting following the public hearing, scheduled in accordance with Section 22[a], *supra*, the Planning Commission shall review the proposed amendment and shall submit a written recommendation to the Council. The Planning Commission shall specifically advise and comment on whether the proposed amendment is consistent with the Comprehensive Plan and any other officially adopted plans that are applicable and whether the Planning Commission recommends adoption of the proposed amendment. In its report to the Council, the Planning Commission may comment, as it deems appropriate, on any other matter related to the proposed amendment.

**[b]** Additional testimony not presented at the public hearing may be considered by the Planning Commission upon favorable vote of the majority of its members present.

**[c]** No member of the Planning Commission shall participate in the discussion or vote on any 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.

### **Section 383. Council Action on Amendments**

**[a]** At any meeting following the receipt of the recommendation from the Planning Commission or after thirty (30) days following referral of the proposed amendment to the Planning Commission if the Planning Commission fails to make a recommendation, the Council may proceed with its consideration of the proposed amendment. The Council must take action, however, no later than sixty (60) days after the Planning Commission adopts a recommendation. A comment by the Planning Commission that a proposed amendment is inconsistent with the comprehensive plan shall not preclude consideration or approval of the proposed amendment by the Council, and the Council is not bound by any other recommendation of the Planning Commission, including a recommendation that the proposed amendment be rejected.

**[b]** Additional testimony not presented at the public hearing may be considered by the Council upon favorable vote of the majority of its members present.

**[c]** Prior to adopting or rejecting any zoning 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.

**[d]** A Council 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.

#### **Section 384. Ultimate Issue Before Council on Amendments**

**[a]** 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 minor map amendments:

- [1] 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.
- [2] The Council shall not regard as controlling any advantages or disadvantages to the individual requesting the change, but shall consider the impact of the proposed change on the public at large.

#### **Section 385. Action Subsequent to Council Decision**

**[a]** 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. All amendments pertaining to watershed protection must be filed with the North Carolina Division of Environmental Management, North Carolina Division of Environmental Health, and the North Carolina Division of Community Assistance.

**[b]** In the case of approval of an amendment, all necessary changes to the zoning ordinance or zoning map shall be entered within five (5) 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.

#### **Section 386. Special Provisions for Conditional Districts**

**[a]** Property may be placed in a conditional district (bearing the designation CD) only in response to a petition by the owners of all property to be included. No State owned property may be placed in a conditional district without approval by the Council of State.

**[b]** Any proposal for a conditional district zoning approval must be accompanied by 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. Refer to Appendix A for additional information.

**[c]** Conditional zoning district decisions are a legislative process subject to judicial review using the same procedures and standard of review established for general district zoning decisions. Requests for conditional zoning district approvals shall be processed and considered in the same procedure as set forth in Section 380, *et seq.*, for zoning amendments and the voting shall be the same as required in zoning matters. Conditional zoning district decisions shall be made in consideration of relevant adopted land use plans such as the Comprehensive Plan, Thoroughfare Plan, Alternative Transportation Plan and similar adopted land use policy.

**[d]** Specific conditions applicable to this 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 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.

A statement analyzing the reasonableness of the proposed rezoning shall be prepared for each petition for a rezoning to a conditional district.

**[e]** 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. Except for a proposed minor modification to a previously approved conditional zoning district, no proposal to amend or change any conditional zoning district may be accepted nor considered within twelve (12) months of the date of the original approval of the conditional zoning district or within twelve (12) months of a hearing upon any previous proposal to amend or change the conditional zoning district. 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 conditional district zoning approval. The Administrator shall determine whether a proposed modification to a previously approved conditional district zone is a minor modification, and the Administrator's decision on this issue may be appealed by an aggrieved party to the Board of Adjustment, in conformity with the provision of Section 106.

**[f]** If a petition for conditional zoning 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 in the office of the Watauga County Register of Deeds.

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

**[h]** Should a petition for a conditional zoning district be denied, then no new petition for making similar use the same property shall be considered within (12) months of the date of the original denial.

**Section 387. Previously Approved Conditional Use Zoning Districts**

**[a]** 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 zoning district applications.

**Section 388. Reserved**

**Section 389. Reserved**

