

ARTICLE 5

AMENDMENTS TO DEVELOPMENT ORDINANCE AND ZONING MAP

5.1 General

The Stallings *Town Council* may amend, supplement, modify, or repeal any provision of this ordinance or amend the zoning maps according to the procedure established by N.C.G.S.160A-384. Such amendments shall be evaluated for compliance with the “Comprehensive Land Use Plan”, adopted November 27, 2017 including subsequent amendments adopted by the Town Council of the Town of Stallings and may require a land use plan and/or comprehensive master plan amendment to ensure compatibility between the plan(s) and the amendment. Amendments and modifications shall be acted upon by the *Town Council*, after recommendation from the *Planning Board*. (Amended August 24, 2020)

5.2 Initiation of Amendments

Proposed changes or amendments to either the text of this Ordinance or the Official Zoning Map may be initiated by the Stallings *Town Council*, the Stallings *Planning Board*, the Stallings *Development Administrator*, any owner of a legal or equitable interest in land located in the Town, or any resident of the Town having a legal or equitable interest in land affected by the proposed amendment. See Section 5.3-1(D) of this Article.

5.3 Amendment Process

5.3-1 Initial Application Process.

- (A.) Pre-filing meeting. Before filing an application for an amendment an applicant shall meet with the *Development Administrator* to discuss the proposed amendment and to become more familiar with the applicable requirements and approval procedures.
- (B.) Neighborhood meeting. It is required that the applicant for a zoning map amendment (rezoning) meet with representatives of the neighborhood in which the property for which the proposed map amendment (rezoning) is located. The applicant shall coordinate the time and date of the meeting to enable the *Development Administrator* to attend and address procedural questions that arise.
- (C.) Filing.
 - (1.) An application requesting an amendment shall be filed with the *Development Administrator*.

- (2.) Applicable fees shall be payable as set forth by the Stallings *Town Council*.
- (3.) Applications must be submitted by 12:00 noon on the last business day of the calendar month in order to be considered at the meeting of the Stallings *Planning Board* scheduled for the following month.

(D.) Content and valid authorization of applications.

- (1.) Each application shall contain or be accompanied by all information required on the application form provided by the *Development Administrator*.
- (2.) Every amendment proposing to change the district boundary lines shall be accompanied by metes and bounds description, a survey of the area involved, or reference to existing lots, sufficient in the estimation of the *Development Administrator* to plot or otherwise identify the amendment on the Official Zoning Map of the Town of Stallings.
- (3.) Any person designated by the owner(s) of the property included in the petition to serve as agent for the owner shall submit such authorization in writing with the application. See Section 5.2 of this Article.
- (4.) Applications for Conditional Zoning of property within the jurisdiction of the Town of Stallings shall follow the procedures appearing in Section 5.4 of this Ordinance.

5.3-2 Review by the Stallings *Planning Board*.

General. Upon submission of a request for Stallings Development Ordinance amendment or an Official Zoning Map amendment, the request shall be scheduled *for review* by the Stallings *Planning Board* in a public meeting.

- (A.) Review – General. The public meeting shall be conducted in accordance with the rules of procedure of the Stallings *Planning Board*. The *Planning Board* shall make recommendations to the Stallings *Town Council* regarding whether to approve or deny each proposed amendment. When considering an amendment, the *Planning Board* shall consider both the consistency and reasonableness of the amendment with the “Comprehensive Land Use Plan”, adopted November 27, 2017 including subsequent amendments adopted by the Town Council of the Town of Stallings. (*Amended August 24, 2020*)
- (B.) Recommendation by the Stallings *Planning Board*. Following a recommendation by the Stallings *Planning Board* on the proposed amendment(s), the action shall be reported to the Stallings *Town Council* for a public hearing and final action according to the process set forth in Section 5.3-3 of this Ordinance. The public hearing will be scheduled as provided by Town Council's rules of procedure for calling public hearings.

(C.) Continuance by the Stallings *Planning Board*. In those cases where, upon hearing the request, the *Planning Board* feels that more information is needed, questions have arisen, or other circumstances occur in which additional time is needed to enable the Board to make a decision, the *Planning Board* may continue their meeting for up to eight (8) days. The Board shall direct the appropriate person(s) to obtain the needed information, provide answers to questions, and/or conduct other investigations during this time to enable the Board to make a decision at the reconvening of the continued meeting. The *Planning Board* shall take action (affirmative or negative recommendation) on continued items at such meeting.

(D.) Content of recommendation and statements of consistency and reasonableness. Any recommendation made by the Stallings *Planning Board* to the Stallings *Town Council* pursuant to this section shall be in writing and shall include a statement describing whether the proposed amendment is both consistent with the “Comprehensive Land Use Plan”, adopted November 27, 2017 including subsequent amendments adopted by the Town Council of the Town of and shall state whether and how the proposed amendment is reasonable. In addition, such recommendation may address any other subject of interest by the *Planning Board*. A comment by the *Planning Board* that a proposed amendment is inconsistent with the Town’s “Comprehensive Land Use Plan”, adopted November 27, 2017 including subsequent amendments adopted by the Town Council of the Town of Stallings and/or unreasonable shall not preclude consideration of approval of the proposed amendment by the *Town Council*. (N.C.G.S. 160A-383) (Amended August 24, 2020)

(E.) Conflict of Interest. No member of the *Planning Board* shall vote on a recommendation regarding any zoning map (rezoning) or text amendment where the outcome of the matter being considered is likely to have a direct, substantial, and readily identifiable financial impact on the member. (N.C.G.S. 160A-381(d))

5.3-3 Review by the Stallings *Town Council*.

(A.) Review -general. Following receipt of either a recommendation, or receipt of the petitioner's request for a public hearing, the Stallings *Town Council* shall hold a public hearing on the proposed amendment. The public hearing shall be scheduled and conducted as provided by the Town Council’s rules of procedure.

(B.) Notification. The *Town Clerk* shall prepare a public notice for the public hearing as required below: (N.C.G.S. 160A-364, 384 and 385).

(1.) Method of procedure for publishing notice of all amendments.

Before adopting, amending, or repealing any ordinance authorized by this Article, the Town Council shall hold a public hearing on it. A notice of the public hearing

shall be given once a week for two successive calendar weeks in a newspaper having general circulation in the area. The notice shall be published the first time not less than 10 days nor more than 25 days before the date fixed for the hearing. In computing such period, the day of publication is not to be included but the day of the hearing shall be included.

(2.) Method of procedure for mailed notice of Zoning Map Amendments.

(a) In addition to the publication requirements for notices of public hearings required in Section 5.3-3(B)(1), the procedures adopted pursuant to this section provide that whenever there is a zoning map amendment, the owner of that parcel of land as shown on the county tax listing, and the owners of all parcels of land within 500' of that parcel of land as shown on the county tax listing, shall be mailed a notice of a public hearing on the proposed amendment by first class mail at the last addresses listed for such owners on the county tax abstracts. This notice must be deposited in the mail at least 10 but not more than 25 days prior to the date of the public hearing. Except for a town-initiated zoning map amendment, when an application is filed to request a zoning map amendment and that application is not made by the owner of the parcel of land to which the amendment would apply, the applicant shall certify to the Town Council that the owner of the parcel of land as shown on the county tax listing has received actual notice of the proposed amendment and a copy of the notice of public hearing. The person or persons required to provide notice shall certify to the Town Council that proper notice has been provided in fact, and such certificate shall be deemed conclusive in the absence of fraud. *(Amended September 23, 2019)*

(b) The first-class mail notice required under subsection (a) of this section shall not be required if the zoning map amendment directly affects more than 50 properties, owned by a total of at least 50 different property owners, and the Town elects to use the expanded published notice provided for in this subsection. In this instance, a town may elect to either make the mailed notice provided for in subsection (a) of this section or may as an alternative elect to publish notice of the hearing as required by G.S. 160A-364, but provided that each advertisement shall not be less than one-half of a newspaper page in size. The advertisement shall only be effective for property owners who reside in the area of general circulation of the newspaper which publishes the notice. Property owners who reside outside of the newspaper circulation area, according to the address listed on the most recent property tax listing for the affected property, shall be notified according to the provisions of subsection (a) of this section.

(b1) Actual notice of the proposed amendment and a copy of the notice of public hearing required under subsection (a) of this section shall be by

any manner permitted under G.S. 1A-1, Rule 4(j). If notice cannot with due diligence be achieved by personal delivery, registered or certified mail, or by a designated delivery service authorized pursuant to 26 U.S.C.

§ 7502(f)(2), notice may be given by publication consistent with G.S. 1A- 1, Rule 4(j1). This subsection applies only to an application to request a zoning map amendment where the application is not made by the owner of the parcel of land to which the amendment would apply. This subsection does not apply to a Town-initiated zoning map amendment.

(c) When a zoning map amendment is proposed, the Town shall prominently post a notice of the public hearing on the site proposed for rezoning or on an adjacent public street or highway right-of-way. When multiple parcels are included within a proposed zoning map amendment, a posting on each individual parcel is not required, but the city shall post sufficient notices to provide reasonable notice to interested persons.

(C.) Action.

- (1.) Before acting on any proposed amendment, the Stallings *Town Council* shall consider any recommendation made by the Stallings *Planning Board*, the recommendation submitted by the *Development Administrator* to the *Planning Board*, the comments made at the public hearing, and any other relevant additional information.
- (2.) When considering a proposed amendment, the Stallings *Town Council* shall not evaluate the petition based on any specific proposal for the use or development of the property unless explicitly required by this Ordinance. The petitioner shall not use any graphic materials or descriptions of the proposed development except for those that would apply to all uses permitted by the requested classification including applications for an overlay district Zoning Map Amendment (TNDO & HIO) where the use is highly pertinent to the facts during consideration of the amendment and/or where a development agreement is to be made a part of the project.
- (3.) Upon reviewing all pertinent information, the Stallings *Town Council* may take whatever action it may deem appropriate, including tabling the application for the purpose of additional neighborhood meeting(s) as required by Section 5.3-1(B) of this Article.

(D.) Upon receipt of the recommendations from the Planning Board, the Town Council shall hold a public hearing on the application for an amendment. Notice of the public hearing shall be provided in accordance with the provisions for public hearings for amendments as set forth in section 5.3-3(B) of this Ordinance and the North Carolina General Statutes. (N.C.G.S. 160A-364, 384, and 385)

(E.) Statement of Consistency and Reasonableness. Prior to adopting or rejecting any amendment, the *Town Council* shall adopt a written statement describing whether its action is both consistent with the “Comprehensive Land Use Plan”, adopted November 27, 2017 including subsequent amendments adopted by the Town Council of the Town of Stallings and other applicable adopted plan that is applicable, and shall state why and how the action taken is considered to be reasonable and in the public interest. Such statements may be incorporated into ordinances amending the Official Zoning Map. (G. S. 160A-383)

(F.) Conflict of Interest. A *Town Council* member shall not vote on any zoning map (rezoning) 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. (reference N.C.G.S. 160A-381(d))

5.3-4 Waiting period for subsequent applications.

(A.) Waiting period - general. When an application for a zoning map amendment has been approved or denied by the Stallings *Town Council*, no application including the same property shall be accepted or considered within four (4) months after the date of the approval or denial. This restriction shall apply regardless of whether or not the new application is for a zoning classification different from the original application.

(B.) Waiting period - waiver. The waiting period required by this section may be waived by a three-fourths vote of Stallings *Town Council* if it determines that there have been substantial changes in conditions or circumstances which may relate to the request. A request for a waiver of the waiting period shall be submitted to the *Development Administrator*, who shall review and prepare a recommendation regarding action on the request. Said recommendation shall be considered by the *Town Council* in their review of the request for a waiver. If the request for the waiver is approved, the application shall go through the full review process as set forth above.

5.4 Conditional Zoning

5.4-1 Purpose.

Conditional zoning is established to provide for flexibility in the development of property while ensuring that the development is compatible with neighboring uses. Conditional zoning affords a degree of certainty in land use decisions not possible when rezoning to a Primary General Use District. Additional standards and regulations may be attached to a proposed development to ensure compatibility with the surrounding uses and with applicable adopted plans in accordance with the requirements of this section.

5.4-2 Conditional zoning districts.

Conditional zoning is available for any of the Primary General Use District classifications enumerated in Article 8 of this Ordinance and shall be indicated on all zoning maps and other official documents with the suffix, "(CZ)" (e.g. "C 74(CZ)"; "IND(CZ)"). *(Amended September 23, 2019)*

5.4-3 General requirements.

The following provisions shall apply in the administration of conditional zoning:

(A) A conditional zoning application shall be considered only upon request of the owner of the affected property or a duly authorized representative of the property owner demonstrated by written, signed and notarized documentation.

(B) Before a public hearing may be held on a petition for a conditional zoning request, the petitioner must file in the planning office at least ten (10) days prior to the Planning Board meeting a written report of at least one community meeting held by the petitioner. Reasonable notice of such a meeting shall be sent by first class mail by the Development Administrator, or their designee, to all property owners within 500' of the subject parcel(s). The report shall include, among other things, a listing of these 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 summary of issues discussed at the meeting, and a description of any changes to the rezoning petition made by the petitioner as a result of the meeting. The adequacy of a meeting held, or report filed pursuant to this section shall be considered by the Town Council but shall not be subject to judicial review. *(Amended September 23, 2019)*

(C) All standards and requirements of the corresponding Primary General Use District shall be met, except to the extent that the conditions imposed by the conditional zoning are more restrictive than the general use standards.

(D) No uses shall be permitted except those enumerated in the ordinance adopting the conditional zoning.

(E) The conditions agreed upon pursuant to the Conditional Zoning approval shall be stated in the adopting ordinance and may limit the uses which are permitted on the property. By way of illustration and not limitation, conditions may specify location on the property of the proposed structure(s), the number of dwelling units, the location and extent of supporting facilities such as parking lots, driveways, and access streets, the location and extent of buffer areas and other special purpose areas, the timing of development, the height of structures, the location and extent of rights-of-way and other areas to be dedicated for public purposes, and other such matters as may be identified as appropriate for the proposed development.

(F) Minor modifications to the approved Conditional Zoning ordinance may be approved by the *Development Administrator*. The minor modifications authorized herein are intended to provide relief where conditions established by the Conditional Zoning ordinance create a hardship based upon a unique physical attribute of the property itself or some other factor unique to the property which was not known at the time of ordinance adoption and which has subsequently rendered the property difficult or impossible to use due to the condition(s) imposed by the zoning. The permit holder shall bear the burden of proof to secure the modification(s). Such modifications shall be limited to the following:

1. A deviation of up to ten percent or 24 inches, whichever is greater, from the approved setback, provided that the conditions for approving a deviation from the required setback established by Article 14 (Flexible Development Standards) of this Ordinance are met.
2. A reduction of up to 25 percent in the number of parking spaces required for the use provided that the proposed development is located within ½ mile of either the Town Center District (TC) or the Mixed Use (MU-1 and MU-2) and on-street parking is available.
3. Any other minor modification in accordance with the limitations and procedures prescribed in this chapter, unless a Conditional Zoning ordinance adopted pursuant to this section specifies otherwise.

Any other modifications must be approved by the Town Council as an amendment to the Conditional Zoning ordinance, and may be referred to the Planning Board or *Development Administrator* as appropriate. The *Development Administrator* shall in every case have the discretion to decline to exercise the power to approve or deny modifications as provided for herein, and may require the applicant to seek an amendment to the Conditional Zoning ordinance.

(G) Any violation of a provision of a Conditional Zoning ordinance shall be treated the same as any other violation of this Ordinance and shall be subject to the same remedies and penalties as any other such violation.

(H) If for any reason any provision of a Conditional Zoning ordinance is found to be illegal or invalid, or if the applicant should fail to accept any condition, the entire Conditional Zoning ordinance shall be null and void, and the property shall revert to its previous zoning classification without further action by the Town Council.

(I) If no formal action (e.g. construction plan submittal, permit application, etc.) has been taken to begin the development of the property in accordance with the Conditional Zoning ordinance within 24 months of its approval by Town Council, or no vested right has been obtained, then the property shall revert to its previous zoning classification, or the *Development Administrator* may initiate appropriate action to rezone the affected property to any other classification.

(J) If the use or uses commenced pursuant to a Conditional Zoning ordinance adopted pursuant to this section are abandoned or discontinued or no vested right has been obtained then the property shall revert to its previous zoning classification, or the *Development Administrator* may initiate appropriate action to rezone the affected property to any other classification.

(K) No variances or conditional use permits may be issued for developments on property that is subject to a Conditional Zoning ordinance.

5.4-4 Application procedure.

When applying for Conditional Zoning, the owner shall specify the nature of the proposed development and shall propose conditions to ensure compatibility with the surrounding uses and consistency with adopted plans. Applications for Conditional Zoning shall be processed, considered, and voted upon using the same procedures and subject to the same requirements as those established in this article for zoning map and zoning text amendments, except as provided below:

(A) The application shall include site plans, landscape plans, building elevations, floor plans, and such other information required to provide the approving bodies with a complete and accurate description of the proposed development.

(B) The application and supporting materials shall be reviewed by the *Development Administrator* in accordance with its procedures for reviewing applications for conditional use permits prior to the meeting of the Planning Board at which the application is to be considered. The recommendations and comments of the *Development Administrator* shall be reported to the Planning Board. In addition, the *Stallings Development Administrator* shall evaluate Conditional Zoning applications on the basis of the criteria for conditional use permits set out in Article 7, and shall submit said report at the public hearings on said applications.

(C) Following review by the *Development Administrator*, the Planning Board shall hold a public hearing on applications for Conditional Zoning. Notice of the public hearing shall be provided in accordance with the provisions of the requirements of this ordinance for zoning map amendments. After holding the public hearing, the Planning Board may recommend approval of the application, including recommending conditions for the zoning; recommend denial of the application; or continue the consideration of the application in order to receive further information regarding the application. In those cases where, upon hearing the application, the Planning Board feels that more information is needed, questions have arisen, or other circumstances occur in which additional time is needed to enable the Planning Board to make a decision, consideration of the application may be continued. The Planning Board may, by majority vote of members present, continue the consideration of the application until the next regularly scheduled Planning Board meeting. The Board shall direct the appropriate person(s) to obtain the needed information, provide answers to questions, or other action(s) during this time to enable the Planning Board to make a decision at the next regularly scheduled meeting. The Planning Board shall take action (affirmative or negative recommendation) on continued items at their next regularly scheduled meeting.

(D) Upon receipt of the recommendations from the Planning Board, the Town Council shall hold a public hearing on the application for Conditional Zoning. Notice of the public hearing shall be provided in accordance with the provisions for public hearings for zoning map amendments as set forth in Section 5.3-3(B) of this Ordinance and the North Carolina General Statutes. (N.C.G.S. 160A-384)

(E) The Town Council's consideration of an application for Conditional Zoning is legislative in nature, and the Council may consider any relevant information in its deliberations, including the criteria for issuing conditional use permits specified in Article 7. Consideration shall be given to adopted land use plans for the area, corridor plans, and other land use policy documents, and to surrounding land uses. The Town Council may adopt or not adopt a Conditional Zoning ordinance or may continue its consideration of the application as necessary or appropriate. *(Amended August 24, 2020)*

(F) During the adoption of a Conditional Zoning ordinance, specific conditions may be proposed by the petitioner, Town Council, Planning Board, or Town staff, but only those conditions mutually approved by Town Council and the petitioner may be incorporated into the zoning regulations and permit requirements. Conditions and site-specific standards imposed in a conditional zoning district shall be limited to those that address the conformance of the development and use of the site to Town ordinances, the officially adopted Comprehensive Plan and those conditions that address the impacts reasonably expected to be generated by the development or use of the site. *(Amended August 24, 2020)*

(G) Specific findings of the Town Council are not required for action on an application for Conditional Zoning. However, a statement analyzing the reasonableness of the proposed rezoning shall be prepared for each conditional use district.

(H) Upon adoption of a Conditional Zoning ordinance, the Official Zoning Map of the Town of Stallings shall be amended to add the conditional zoning district. The *Development Administrator* shall maintain a book or file for Conditional Zoning ordinances, and each Conditional Zoning ordinance shall be filed therein. Failure to comply with this provision shall not render the ordinance invalid.

(I) The Conditional Zoning ordinance adopted as provided herein shall be perpetually binding upon the affected property unless subsequently changed or amended as provided for in this Ordinance.

(J) Conditional Zoning ordinances are legislative in nature, and judicial review of Conditional Zoning ordinances shall be as provided by law for zoning ordinances.

(K) Upon approval of a Conditional Zoning application, which could be interpreted as inconsistent with the Comprehensive Land Use Plan the Stallings Comprehensive Land Use Plan, and any associated Small Area Plan shall be deemed amended reflecting any changes incurred as a result of the approved conditional zoning. The application for a conditional zoning may, but is not required to, include a request that states any necessary amendments that need to

be made to the Comprehensive Land Use Plan, Future Land Use Map and any associated Small Area Plan map. (*Amended August 24, 2020*)