

ARTICLE XX
AMENDMENTS

Section 320 Amendments in General.

(a) Amendments to the text of this ordinance or to the zoning map may be made in accordance with the provisions of this article.

(b) Conditional use district zoning requests shall be made in accordance with the provisions of Section 327.

(c) The Town Council shall consider amendments to this ordinance not more than four times per year at one meeting during the months of February, May, August and November. The Town Council may waive this restriction if it finds an emergency exists by a three-fourths majority vote of its membership.

(d) Definition of Emergency: A sudden unexpected happening; an unforeseen occurrence or condition; specifically, perplexing contingency or complication of circumstances; a sudden or unexpected occasion for action; exigency; pressing necessity. *(Amended 2/09/93)*

(e) As provided in NCGS 160A-385(b), amendments, modifications, supplements, repeal or other changes in zoning regulations and restrictions and zone boundaries shall not be applicable or enforceable without consent of the owner with regard to buildings and uses for which either (i) a building permit has been issued pursuant to NCGS 160A-417 prior to the enactment of the ordinance making the change or changes as long as the permit remains valid and unexpired pursuant to NCGS 160A-418 and unrevoked pursuant to NCGS 160A-422 or (ii) a vested right has been established pursuant to NCGS 160A-385.1 and the provisions of Section 328 of this Ordinance and such vested right remains valid and unexpired. *(Amended 6/13/95)*

(f) The Town may not deny a zoning or rezoning request for a school based on consideration of the level of service of a road abutting or near the school.

Section 321 Initiation of Amendments.

(a) Whenever a request to amend this ordinance is initiated by the Town Council, the Planning Board, the Board of Adjustment, or the town administration, the administrator, in consultation with the Town Attorney shall draft an appropriate ordinance and set a date for a public hearing.

(b) Any other person may also 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; When an authorized agent files a petition on behalf of a property owner, the agent shall provide the Town with written documentation that the owner of the property has authorized the filing of the petition.

- (2) A metes and bounds description and a scaled map of the land affected by the 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 in Section 323;
- (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;

(c) Petitions for amendments shall be submitted to the administrator 25 days prior to the date of the Planning Board meeting at which the petition will be reviewed in accordance with the schedule delineated in Section 320(c). If the submission deadline date falls on a Saturday, the application must be received by the preceding Friday. If the submission deadline date falls on a Sunday, the application must be received by the following Monday.

(d) If the administrator determines that the development for which a rezoning is requested will have or may have substantial impact on surrounding properties, he shall require that (i) the applicant notify, at a minimum, all adjoining property owners, at least ten days in advance, of an informal informational meeting and (ii) the applicant conduct the informational meeting to discuss the impacts of the proposed rezoning with the adjoining property owners. The purpose of the informational meeting is to involve those property owners most likely impacted by a proposed project in the early steps of the development process. Consequently, the informational meeting should be held prior to the public hearing date established for the rezoning request.

(e) Without limiting the generality of subsection (d), the administrator may require the applicant to hold an informational meeting when:

- (1) the request for a rezoning involves a residential project of 25 or more dwelling units.
- (2) the request for a rezoning involves 10 acres or more.

Section 322 Planning Board Consideration of Proposed Amendments.

(a) After a date for a public hearing on a proposed amendment is set, by the administrator, the proposed amendment shall be referred to the Planning Board for its consideration.

(b) The Planning Board shall endeavor to review the proposed amendment in such a timely fashion that any recommendations it may have can be presented to the Council at the public hearing on the amendment. The Planning Board shall advise and comment on whether the proposed text amendment or map amendment is consistent with the adopted comprehensive plan or any other applicable officially adopted plans. However, if the Planning Board is not prepared to make recommendations at the public hearing, it may request the Council to delay final action on the amendment until such time as the Planning Board can present its recommendations.

(c) The Planning Board shall provide a written recommendation to the Town Council that addresses plan consistency and other matters as deemed appropriate by the Planning Board, but **a**

comment by the Planning Board that a proposed amendment is inconsistent with the comprehensive plan shall not preclude consideration or approval of the proposed amendment by the Town Council.

(d) The Council need not await the recommendations of the Planning Board before taking action on a proposed amendment, nor is the Council bound by any recommendations of the Planning Board that are before it at the time it takes action on a proposed amendment.

Section 323 Hearing Required; Notice.

(a) No ordinance that amends any of the provisions of this ordinance may be adopted until a public hearing has been held on such ordinance.

(b) The administrator shall publish a notice of the public hearing on any ordinance that amends the provisions of this ordinance once a week for two successive weeks in a newspaper having general circulation in the area. The notice shall be published for the first time not less than ten days nor more than twenty-five 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.

(c) With respect to map amendments, the administrator shall provide first class mail notice of the public hearing to the record owners for tax purposes of all properties whose zoning classification is changed by the proposed amendment as well as the owners of all properties abutting the property rezoned by the amendment.

(d) The notice required in subsection (c) shall not be required in the following situations:

- (1) The total rezoning of all property within the corporate boundaries of Edenton unless the rezoning involves zoning of parcels of land to less intense or more restrictive uses. If the rezoning involves zoning of parcels of land to less intense or more restrictive uses, notification to owners of these parcels shall be made by mail in accordance with subsection (c) of this Section;
- (2) The zoning is an initial zoning of the entire zoning jurisdiction area.
- (3) The zoning reclassification action directly affects more than 50 properties, owned by a total of at least 50 different property owners;
- (4) The reclassification is an amendment to the zoning text; or
- (5) The Town is adopting a water supply watershed protection program as required by NCGS 143-214.5.

In any case where this subsection eliminates the notice required by subsection (c), the Town shall publish once a week for four successive calendar weeks in a newspaper having general circulation in the area maps showing the boundaries of the area affected by the proposed ordinance or amendment. The map shall not be less than one-half of a newspaper page in size. The notice 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 the Town's jurisdiction or 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 by mail pursuant to subsection (c). The person or persons mailing the notices shall certify to the Town Council that fact, and the certificate shall be deemed conclusive in the absence of fraud. In addition to the published notice, the Town shall post one or more prominent signs immediately adjacent to the subject area reasonably calculated to give public notice of the proposed rezoning. *(Amended 6/13/95)*

(e) The administrator shall also post notices of the public hearing in the vicinity of the property rezoned by the proposed amendment and take any other action deemed by the administrator to be useful or appropriate to give notice of the public hearing on any proposed amendment.

(f) The notice required or authorized 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) If the proposed amendment involves a change in zoning district classification, reasonably identify the property whose classification would be affected by the amendment;
- (4) State that the full text of the amendment can be obtained from the Town Clerk; and
- (5) State that substantial changes in the proposed amendment may be made following the public hearing.
- (6) Summarize the protest petition provisions of Section 326 if the proposed amendment involves a change in zoning district classification.

(g) The administrator shall make every reasonable effort to comply with the notice provisions set forth in this section. However, it is the Council's intention that no failure to comply with any of the notice provisions (except those set forth in subsection (b)) shall render any amendment invalid.

(h) The person or persons mailing notices to adjoining property owners, as defined in NCGS 160A-384, shall certify to the Town Council that fact.

Section 324 Council Action on Amendments.

(a) At the conclusion of the public hearing on a proposed amendment, the Council may proceed to vote on the proposed ordinance, refer it to a committee for further study, or take any other action consistent with its usual rules of procedure.

(b) The Council is not required to take final action on a proposed amendment within any specific period of time, but it should proceed as expeditiously as practicable on petitions for amendments since inordinate delays can result in the petitioner incurring unnecessary costs.

(c) Before taking such lawful action, the Town Council shall consider the Planning Board's recommendation and staff report on each proposed amendment. When considering a zoning amendment, the Town Council is directed to adopt a plan consistency statement that takes one of three forms, as follows:

- (1) A statement approving the amendment and describing how it is consistent with the plan;
- (2) A statement rejecting the amendment and describing how it is inconsistent with the plan; or
- (3) A statement approving the amendment and a declaration that the plan also is amended. In this situation, the statement must also include an explanation of "the change in conditions the Council took into account in amending the UDO to meet the development needs of the community."

In all three options, the statement is to include an explanation of why the action being taken is reasonable and in the public interest, as required by current law. The Planning Board and staff recommendations must be recorded in the Town Council minutes of the meeting at which Board action was taken.

Section 325 Ultimate Issue Before Council on Amendments.

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 excluded. When considering proposed map amendments:

- (1) Except for rezoning requests submitted in accordance with Section 327, 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 326 Citizen Comments.

Zoning ordinances may from time to time be amended, supplemented, changed, modified, or repealed. 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 Town Clerk at least two business days prior to the proposed vote on such change, the Town Clerk shall deliver such written statement to the Town Council. If the proposed change is the subject of a quasi-judicial proceeding under NCGS 160A-388, the Town Clerk shall provide only the names and addresses of the

individuals providing written comment, and the provision of such names and addresses to all members of the Council shall not disqualify any member of the Council from voting.

Section 327 Conditional Use District Rezonings (*Amended 1/14/03*).

(a) There are circumstances in which a general zoning district designation allowing a use by right would not be appropriate for a particular property even though the use itself could be appropriate for the property consistent with the objectives of this ordinance and the adopted Land Use Plan. The review process established in this section provides for the accommodation of such uses by reclassification of property into a conditional use district, subject to specific conditions, which ensure compatibility of the use with the surrounding area and enjoyment of the neighboring properties.

(b) The Conditional Use District rezoning process is established to address certain situations when particular uses, future uses, or unknown future uses may be acceptable but the general zoning district which allows that use(s) would be inappropriate at the particular locations in the absence of special conditions. Where the applicant for rezoning desires property to be rezoned to such a district in such situations, the Conditional Use District Classification will be considered only upon request/acceptance of the applicant for rezoning. Conditional Use Districts (bearing the designation C.U.) corresponds to an identical district, for example a Conditional Use Highway Commercial District shall be labeled at C.U. CH.

(c) Within the Conditional Use District, only those uses authorized by this ordinance as permitted, in the zoning district with which the C.U. District corresponds shall be allowed and all other requirements of the corresponding district shall be met. No C.U. District shall be established until the Town Council has approved the rezoning petition in accordance with Section 321 of this ordinance. In addition, within a C.U. District no use shall be allowed except pursuant to a Conditional Use Permit authorized by the Town Council, which shall specify the use or uses authorized. Such permit may further specify the location on the property of the proposed use or uses, 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 location and extent of right-of-way and other areas to be dedicated for public use, building design, and other such matters as the applicant may propose as conditions upon the request. In the course of evaluating the proposed use, the Council may request additional information deemed appropriate to provide a complete analysis of the proposal. This process allows rezoning requests and a Conditional Use Permit applications to be processed at the same time, however, the governing bodies should treat the two proposals as legally independent, separate decisions. In granting a Conditional Use Permit, the Town Council may impose such additional reasonable and appropriate safeguards upon such permit, as it may deem necessary in order that the purpose and intent of this section are served, public welfare secured, and substantial justice done. The petitioner shall have a reasonable opportunity to consider and respond to any such conditions prior to final action by the Town Council.

(d) The authorization of a Conditional Use Permit, in any C.U. District for any use, which is allowed only as a Special Use in the zoning district, which corresponds, to the C.U. District, shall preclude any requirements for obtaining a Special Use Permit from any such use from the Board of Adjustment.

(e) If a petition is approved under this section, the district that is established, the approved petition, and all conditions, which may have been attached to the approval, are binding on the property as an amendment to these regulations and to the zoning map. All subsequent development and use of the property shall be in accordance with the standards for the approved C.U. District, the approved petition, and all conditions attached to the approval. Only those uses and structures indicated in the approved petition and site plan shall be allowed on the subject property. Any development in the district shall comply with all provisions of and conditions to the approved petition and site plan. Any uses and structures on the subject property shall also comply with all standards and requirements for development in the underlying general zoning district.

(f) Following the approval of the petition for a C.U. District, the subject property shall be identified on the zoning map by the appropriate district designation. A C.U. District shall be identified by the same designation as the general zoning district bearing the designation C.U., for example a Conditional Use Highway Commercial District shall be labeled as C.U. CH.

(g) Except as provided in subsection (h), changes to the approved petition or to the conditions attached to the approval shall be treated the same as amendments to these regulations or to the zoning map and shall be processed in accordance with the procedures in this section.

(h) Minor changes in the detail of the approved petition or site plan which will not alter the basic relationship of the proposed development to surrounding properties or the standards and requirements of these regulations or to any conditions attached to the approval may be approved by the administrator without going through the amendment process or a public hearing. The administrator, at his discretion, may forward any application for changes in detail to the Town Council for its consideration as an amendment to these regulations or the zoning map. The applicant may appeal the decision of the administrator to the Board of Adjustment for review and decision as to whether an amendment to the approved district shall be required.

(i) The objective of the C.U. District is to encourage orderly development in accordance with firm plans to develop the property. Therefore, from the date of approval of the petition, the administrator shall periodically examine the progress made toward developing the property in accordance with the approved petition and any conditions attached to the approval. If the administrator determines that construction has not commenced or is not in accordance with the approved petition and conditions, the administrator shall either initiate a reclassification of the property in accordance with the procedures established in this section or shall forward a report to the Council recommending that the property be classified to another district.

(j) After a certificate of occupancy has been issued for the development approved as a C.U. District, the administrator shall periodically inspect the use and maintenance of the subject property to ensure continued compliance with these regulations, the approved petition, and any conditions attached by the Town Council to approval of the petition.

Section 328 Vested Right.

(a) A vested right, in accordance with NCGS 160A-385.1, may be established upon the approval or conditional approval of a site specific development plan by the Town Council in accordance with the provisions outlined in this section. A right which has been vested as provided for in this section shall, as a general rule, remain valid for two years and shall attach to and run with the land.

(b) Unless otherwise specifically provided, or unless clearly required by the context, the words and phrases defined in this subsection shall have the meaning indicated when used in this article.

- (1) *Landowner.* Any owner of a legal or equitable interest in real property, including the heirs, devisees, successors, assigns, and personal representative of such owner. The landowner may allow a person holding a valid option to purchase to act as his agent or representative for purposes of submitting a proposed site specific development plan.
- (2) *Property.* All real property subject to the regulations and restrictions of this ordinance as well as the zoning district boundaries established by this ordinance and depicted on the official zoning map.
- (3) *Site specific development plan.* A plan which has been submitted to the Town of Edenton by a landowner in accordance with NCGS 160A-385.1(b)(5) describing in detail the type and intensity of use for a specific parcel or parcels of property. Such plan shall be in the form of a site plan required to obtain a conditional use permit and shall include the information required by Section 49 and Appendix A. All site specific development plans shall be approved by the Town Council.
- (4) *Vested right.* The right to undertake and complete the development and use of property under the terms and conditions of an approved site specific development plan.

(c) A vested right shall be deemed established upon the effective date of approval by the Town Council of a site specific development plan. Following the approval of a site specific development plan, the administrator shall issue a vested right certificate to the landowner which indicates the duration of the vesting period, the conditions, if any, imposed on the approval of the site specific development plan, and any other information determined by the zoning officer to be necessary to administer the vested right.

(d) A vested right shall confer upon the landowner the right to undertake and complete the development and use of the property as delineated in the approved site specific development plan. The Town Council may approve a site specific development plan upon such terms and conditions as may be determined necessary to protect the public health, safety, and welfare. Failure to comply with the approved terms and conditions shall result in a forfeiture of vested rights.

(e) Approval by the Town Council of a site specific development plan shall follow the procedural requirements for the issuance of a conditional use permit as outlined in Articles IV and VI. Changes in or modifications to an approved site specific development plan shall be made only with the concurrence of the Town Council in accordance with the provisions of Section 65.

(f) A vested right obtained under this section runs with the land and is generally valid for two years from the effective date of approval by the Town Council of a site specific development plan. The Town may, at its sole discretion, provide that rights shall be vested for a period greater than two years but not exceeding five years where warranted due to such circumstances as the size

and phasing of development, the level of investment, the need for the development, etc. A vested right shall not be extended by any amendments or modifications to an approved site specific development plan unless expressly provided for by the Town Council. A vested right shall expire at the end of the established vesting period if no building permit applications have been filed with the Town to construct the use or uses proposed in the approved site specific development plan. If building permits are issued, the provisions of NCGS 160A-418 and NCGS 160A-422 shall apply, except that a building permit shall not expire or be revoked because of the lack of progress during the established vesting period.

(g) A vested right, once established or provided for in this section, precludes any zoning action by the Town which would change, alter, impair, prevent, diminish, or otherwise delay the development or use of the property as set forth in the approved site specific development plan, except:

- (1) With the written consent of the affected landowner,
- (2) Upon findings, by ordinance after notice and a public hearing, that natural or man-made hazards in the immediate vicinity of the property, if uncorrected, would pose a serious threat to the public health, safety, and welfare if the project were to proceed as contemplated in the site specific development plan;
- (3) To the extent that the affected landowner receives compensation for all costs, expenses, and other losses incurred by the landowner, including, but not limited to, all fees paid in consideration of financing, and all architectural, planning, marketing, legal, and other consultant's fees incurred after approval by the town, together with interest thereon at the legal rate until paid. Compensation shall not include any diminution in the value of the property which is caused by such action;
- (4) Upon findings, by ordinance after notice and a public hearing, that the landowner or his representative intentionally supplied inaccurate information or made material misrepresentations which made a difference in the approval by the Town of the site specific development plan; or
- (5) Upon the enactment or promulgation of a state or federal law or regulation which precludes development as contemplated in the site specific development plan, in which case the Town may modify the affected provisions, upon a finding that the change in state or federal law has a fundamental effect on the plan, by ordinance after notice and a public hearing.

(h) The establishment of a vested right shall not preclude the application of overlay zoning which imposes additional requirements but does not affect the allowable type or intensity of use, or ordinances or regulations which are general in nature and are applicable to all property subject to land use regulation by the Town, including, but not limited to, building, fire, plumbing, electrical, and mechanical codes.

(i) Notwithstanding any provisions of this section, the establishment of a vested right shall not preclude, change, or impair the authority of the Town to enforce provisions of this ordinance governing nonconforming situations or uses.

(j) A vested right obtained under this section is not a personal right, but shall attach to and run with the applicable property. After approval of a site specific development plan, all successors to the original landowner shall be entitled to exercise such vested rights.

(k) The Town shall not require a landowner to waive his vested rights as a condition of developmental approval. (*Amended 6/13/95*)

(l) *Vested Right for Multi-Phased Development.* A seven-year vested right is established for all phases of the development at the time a site plan is approved for the initial phase of the development. Under common law vesting, substantial expenditures would have to be made for development in a particular phase of the project for that phase to get a vested right.