

SECTION 16 AMENDMENT TO UNIFIED DEVELOPMENT ORINANCE; CONDITIONAL ZONING

16.1 TEXTUAL AND MAP AMENDMENTS

1. **Statement of Intent**

For the purpose of establishing and maintaining sound, stable and desirable development within the Town of Waxhaw this Ordinance shall not be amended except to correct an error in the Ordinance or, because of changed or changing conditions in a particular area or in the Town generally, or to extend the boundary of an existing Zoning District or to rezone an area to a different Zoning District, or to change the regulation and restrictions of the Unified Development Ordinance. These amendments shall be reasonably necessary to promote the public health, safety and general welfare and to achieve the purposes of this Ordinance.

2. **Amendment Initiation**

Subject to the limitations of the foregoing Statement of Intent an amendment to this Ordinance may be initiated by:

A. Textual Amendment

1. The Board of Commissioners;
2. The Planning Board;
3. Planning staff;
4. Any person having a substantial interest in the UDO.

B. Map Amendment

1. The Board of Commissioners;
2. The Planning Board;
3. Planning staff;
4. The affected property owner and/or agent of the owner or a third party with the property owner's written consent.

3. **Procedure for Submission and Consideration of Applications for Amendment**

A. Submitted to the Administrator

All applications for amendments to this Ordinance shall be in writing signed and filed with the Administrator.

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The Administrator shall ensure that the application contains all the required information as specified in this Ordinance and on the application. Applications which are not complete, or otherwise do not comply with the provisions of this Ordinance, shall be returned to the applicant with a notation of the deficiencies in the application. A copy of said notation shall be placed in the applicant's file and be maintained at Town Hall.

Completed applications shall be received a minimum of twenty-five (25) days prior to the planning board meeting at which the proposed amendment is scheduled to be considered.

B. Contents of Application

All applications for amendments to this Ordinance without limiting the right to file additional material shall contain at least the following:

1. If the proposed amendment would require a change in the Zoning Map, a map at a scale of not less than four hundred feet to the inch nor more than twenty feet to the inch showing the land which would be covered by the proposed amendment.
2. A legal description of such land.
3. The names and addresses of any abutting property owners including those directly across any street.
4. Payment of applicable fee in accordance with the approved fee schedule.

Certain zoning classifications or uses may require additional material as set forth in the specific section of this UDO.

C. Conditional Use District Rezoning

Conditional Use zoning (referred to as CU) will not be applied to any new zoning requests upon the adoption date (11/10/2009) of this amendment. All parcels zoned CU prior to the amendment adoption date may go through the conditional use process or the owner/applicant may choose to go for Conditional Zoning District (referred to as CD).

No Permit shall be issued for any development within a Conditional Use District except in accordance with an approved Conditional Use Permit.

D. Conditional Zoning District

It is the intent of this Section that the applicant for rezoning to any District other than a Conditional Zoning District (referred to as CD) shall be prohibited from offering any testimony or evidence concerning the specific manner in which he intends to use or develop the property. If the applicant believes that the development of his/her property in a specific manner will lessen adverse effects upon surrounding properties or otherwise make the rezoning more in

accordance with principles underlying the Town's comprehensive zoning plan, he shall apply for rezoning to the appropriate Conditional Zoning District and specify the nature of his proposed development.

4. Planning Board Review and Recommendations

The Planning Board shall consider the application for amendment at the Planning Board Meeting. The Planning Board shall have a maximum of forty-five (45) days from the date of the public meeting to make a recommendation on the application, except for the sixty-two (62) day requirement for Conditional Zoning Districts. If a recommendation is not made during said time period, the application shall be forwarded to the Board of Commissioners without a recommendation from the Planning Board. Notwithstanding the forgoing, the Planning Board may extend a longer time period with consent of the applicant.

A. If a recommendation is made to the Board of Commissioners by the Planning Board concerning an application for rezoning said recommendation shall be as follows:

1. Grant the rezoning as requested, or
2. Grant the rezoning with a reduction of the area requested, or
3. Grant the rezoning to a more restrictive general zoning district or districts, or
4. Grant the rezoning with a combination of Section 16.1.4(A)(2), or 16.1.4(A)(3), or
5. Deny the rezoning as requested.

The list of general zoning districts in descending order of restrictiveness shall be:

- | | |
|---------|----------|
| 1. OS | 12. C-1 |
| 2. R-1 | 13. C-2 |
| 3. R-2 | 14. C-3 |
| 4. R-3 | 15. TC |
| 5. R-4 | 16. MS |
| 6. TND | 17. C-4 |
| 7. RM-1 | 18. CPUD |
| 8. RM-2 | 19. IPUD |
| 9. UN | 20. I-1 |
| 10. OIS | 21. I-2 |
| 11. NMX | |

B. If a recommendation is made to the Board of Commissioners by the Planning Board concerning an amendment to change the text or map of this Ordinance, said recommendation shall be as follows:

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1. Adoption of the amendment as written, or mapped.
2. Adoption of the amendment as revised by the Planning Board, or
3. Denial of the amendment.

5. The Board of Commissioners Shall Hold a Public Hearing

The Board of Commissioners shall receive public comment on applications for amendments to this Ordinance in a Public Hearing at a time and place to be announced by public notice. A Quorum of the Commissioners is required for such hearing.

6. Public Hearing and Notice Thereof

A public hearing as mentioned above shall be held by the Board of Commissioners before adoption of any proposed amendment to this Ordinance. Notice of the public hearing shall be given as follows:

- A. 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 town. The notice shall be published 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 such period, the day of publication is not to be included but the day of the hearing shall be included.
- B. Whenever there is a zoning classification action involving a parcel of land, the owner of that parcel of land as shown on the county tax listing, and the owners of all parcels of land abutting that parcel of land as shown on the county tax listing, shall be mailed a notice of the proposed classification by first class mail at the last addresses listed for such owners on the county tax abstracts; provided that this sentence does not apply in the case of a total rezoning of all property within the corporate boundaries of a municipality. The person or persons mailing such notices shall certify to the Board of Commissioners that fact, and such certificate shall be deemed conclusive in the absence of fraud.
- C. When a zoning map amendment is proposed, at least (1) notice shall be conspicuously posted on the subject property at least ten (10) days prior to 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 town shall post sufficient notices to provide reasonable notice to interested persons.

7. Board of Commissioners Action

The Board of Commissioners shall not consider the adoption of any proposed application for amendment until after the Planning Board makes a recommendation, or fails to make a recommendation within the time allowed.

Once the Board of Commissioners has received the recommendation of the Planning Board or the forty-five (45) day period elapses without a recommendation, the Board of Commissioners shall consider the application at its next regularly scheduled meeting, unless a later date is mutually agreed upon by the Zoning Administrator and Applicant or when the application is not complete because of plan revisions or requirements suggested by the Planning Board or the Zoning Administrator. The Board of Commissioners shall render a decision on the application in the form of any of the various options listed in Subsection 16.1.4(A) or 16.1.4(B). Alternatively, the Board of Commissioners may send the application back to the Planning Board for further study and consideration.

The Board of Commissioners shall have the authority to call for additional public hearings on any amended application brought before them. The forty-five (45) day Planning Board review period shall be in effect after the close of the first, or any subsequent public hearings called for by the Board of Commissioners on a particular application.

8. Withdrawal of Application

An applicant may withdraw his application at any time by written notice to the Administrator. However, any withdrawal of an application after the giving of the first notice as required in Subsection 16.1.6 shall be considered, for the purposes of Subsection 16.1.9, a denial of the petition. An applicant shall remain liable for any and all fees and costs regardless of withdrawal.

9. Effect of Denial on Subsequent Petitions

When the Board of Commissioners shall have denied a map application or the application shall have been withdrawn after the first notice of the public hearing thereon, the Board of Commissioners shall not entertain another application for the same or similar map amendment, affecting the same property or a portion of it until the expiration of a one year period, extending from the date of denial or withdrawal, as applicable. This waiting period shall not be applicable for the same property or a portion of it if the first application was not for a Conditional Zoning District and the second application is for a Zoning District designated as a Conditional Zoning District or the Administrator determines at least one of the following has occurred:

- A. There has been a significant change in the zoning district classification of an adjacent piece of property.
- B. The Town has adopted a plan that changes policy regarding how the property affected by the amendment should be developed.

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- C. Construction or expansion of a road, water line, sewer line, or other such facilities has occurred to serve the property and can comfortably accommodate the intensity of development allowed under the proposed classification.

16.2 | CONDITIONAL ZONING DISTRICTS

It will be noticed that a Conditional Zoning District (bearing the designation CD) corresponds to each of the other primary Districts authorized in this Ordinance

1. Purpose

Conditional zoning districts provide for those situations where a particular use, properly planned, may be appropriate for a particular site, but where the general district has insufficient standards to mitigate the site-specific impact on surrounding areas. Uses which may be considered for a conditional zoning district are restricted to those uses permitted in the corresponding general zoning district. Conditional Zoning Districts are established on an individualized basis, only in response to a petition by the owners of all the property to be included. Zoning of a conditional zoning district is not intended for securing early or speculative reclassification of property.

2. General Requirements

A. Application

Application

Rezoning to a Conditional Zoning shall only be considered upon written consent or request of all the owners of the property being rezoned.

Minimum Standards

Within a Conditional Zoning District, all standards and requirements of the corresponding general Zoning District shall be met, except to the extent that the conditions imposed are more restrictive than those standards.

B. Procedures

Applicants for conditional zoning must first meet with Waxhaw Planning and Community Development staff for a pre-application review of the project proposal. During the pre-application meeting, staff will discuss procedural and substantive matters related to the proposed application.

A conditional zoning application shall be filed with the Administrator, a minimum of ninety (90) days prior to the Planning Board Meeting at which the application is to be heard. The application shall be accompanied by a site plan, drawn to scale and supporting information and text 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. *This information must also be submitted in digital format.* The following information shall be provided, if applicable:

1. Name, address and phone number of the property owner (or his agent) and the tax parcel number of the property. This information should be obtained from Union County tax records. (Note: The property owner or his authorized agents are the only two parties who may initiate a request for conditional zoning.)
2. A boundary survey and vicinity map, showing the property's total acreage, zoning classification(s), general location in relation to adjoining streets, railroads and/or waterways; date and north arrow.
3. Existing and proposed topography at two-foot contour intervals or less on the site and within 300 feet of the site boundary.
4. The owner's names and addresses, tax parcel numbers and existing land use(s) of all adjoining properties. This information should be obtained from Union County tax records.
5. Proposed use of all land and structures including the number of residential units (if applicable).
6. Proposed number and location of all structures, their approximate area and their approximate exterior dimensions, to include height of structure.
7. A description of all screening and landscaping required by these regulations and/or proposed by the applicant.
8. All existing easements, reservations and rights-of-way.
9. Proposed phasing, if any, and approximate completion time for the project.
10. Delineation of areas within the regulatory floodplain as shown on the official Federal Emergency Management Agency (FEMA) Flood Hazard Boundary Maps for Union County.
11. Traffic, parking and circulation plans, showing the proposed location and arrangement of parking spaces and ingress and egress to adjacent streets, existing and proposed.
12. Typical building front elevation drawings proposed for the development that depicts exterior features and characteristics of the buildings. Such drawings shall also depict the relationship such buildings will have with the streetscape.
13. Proposed number, type, and location of signs.
14. Tree Survey (Section 9.21.7(F) Tree Survey Requirements)

The Zoning Administrator has the authority to waive any application requirement where the type of use or scale of proposal makes providing that information unnecessary or

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impractical. In the event that such a waiver is granted by the Zoning Administrator, a substantive explanation for said waiver shall accompany the application.

C. Additional Information

In the course of evaluating the proposed rezoning, the Administrator, the Planning Board or Board of Commissioners may request additional information from the applicant. A request for such additional information shall stay any further consideration of the application by the Board of Commissioners or Planning Board until the requested information is submitted. This information may include (but shall not be limited to) the following:

1. Stormwater drainage plan.
2. The existing and proposed location of all water and sewer lines and fire hydrants intended to serve the proposed development.
3. A traffic impact study of the proposed development prepared by a qualified transportation or traffic engineer or planner. The traffic impact study may, as requested, include any or all of the following information:
 - a. Existing traffic conditions within the study area boundary.
 - b. Traffic volumes generated by the existing and proposed development on the parcel, including the morning peak, afternoon or evening peak, and average annual daily traffic levels.
 - c. The distribution of existing and proposed trips through the street network.
 - d. Analyses of the capacities of intersections located within the study area boundary.
 - e. Recommendations for improvements designed to mitigate traffic impacts and to enhance pedestrian access to the development from the public right-of-way; and
4. An environmental impact statement from a qualified entity that contains the following information:
 - a. A cover sheet which provides, in summary form, a description of the proposed project; and,
 - b. A statement of purpose and need of the project; and,
 - c. For projects proposed by public entities, a list of alternatives of the proposed project; and,
 - d. A succinct description of the environment affected by the project; and,
 - e. A discussion of short and long-term consequences of the project on the environment including any adverse environmental impacts which cannot be avoided; and,

f. A list of means that could be employed to mitigate any negative effects on the environment caused by this project; and,

5. Other pertinent information, including but not limited to safety, noise, and impacts of air quality and other natural resources.

D. Application Completeness

No application may be deemed complete unless it contains or is accompanied by all items listed in Section 16.2.2(B) (and as may be required in Section 16.2.2(C)) and a fee, in accordance with a fee schedule approved by the Board of Commissioners for the submittal of conditional zoning application. Applications which are not complete, or otherwise do not comply with the provisions of this Ordinance, shall be returned to the applicant with a notation of the deficiencies in the application. A copy of said notation shall be placed in the applicant's file and be maintained at Town Hall.

The applicant, in submitting an application for a conditional zoning, shall also be responsible for reimbursing the Town for all costs associated with the Town's engineering, legal, and/or outside professional consultant services with respect to review of the conditional zoning application. No application is deemed complete until all fees have been paid to the Town of Waxhaw.

Three (3) copies of a complete application (including all required attachments and maps) for a Conditional Zoning shall be submitted to the Town for initial staff review at least ninety (90) days prior to the Planning Board meeting. Ten (10) copies shall be submitted for the Planning Board at least 10 days prior to the meeting date. Twelve (12) copies shall be submitted for the Board of Commissioners at least 15 days prior to the meeting date. Submissions shall be in a PDF file format or, other electronic format at the request of the Zoning Administrator. The applicant is responsible for providing printed copies of the application and required attachments. If the Town must print electronic submissions the applicant will reimburse the Town for printing costs. Once complete, the Administrator shall notify the applicant to schedule a neighborhood meeting.

E. Neighborhood Meeting

Once the requisite copies of the application have been submitted to the Town and the requisite fees have been paid, one or more Neighborhood Meetings, as determined by the Zoning Administrator, shall be scheduled and held. As used herein, neighborhood meeting shall mean and refer to a meeting with participation from interested parties and complying with the requirements described herein. Such meeting shall occur prior to any recommendation by the Planning Staff and prior to going before the Planning Board and Board of

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Commissioners. The neighborhood meeting is designed to provide an opportunity for community involvement in accordance with the following requirements:

1. The applicant shall provide an agenda, schedule, location and list of participants such as landscape architects, engineers, etc. to answer questions from citizens and service providers (NCDOT, utilities, DENR) for the project in cooperation with the Planning Staff.
2. All meetings shall be held at the proposed development and/or in the Town of Waxhaw municipal limits. The applicant shall hold a minimum of one (1) neighborhood meeting, unless additional meetings are necessary as determined by the Zoning Administrator. The applicant is responsible for all costs associated with the neighborhood meeting, including notification requirements, venue rental, etc.
3. Notice of Public Involvement Meetings shall at a minimum, be given as follows:
 - a. A notice shall be sent by first class mail by the applicant to the owners of all properties that lie within three hundred (300) feet from the exterior boundaries of the proposed development. The notice shall include the date, time, and location of the meeting and a brief description of the project, current and proposed zoning of the property, site and vicinity maps. The notice shall be sent at least 10 days but not more than 25 days prior to the neighborhood meeting. Proof of mailings shall be provided to the Town of Waxhaw either by submitting a notarized photo copy of the postmarked envelopes to be mailed or sending the notices certified mail and providing copies of the return receipts to the Town.
 - b. A Neighborhood Meeting notification sign shall be posted by the applicant in a conspicuous place at the property not less than 10 days prior to the Neighborhood Meeting. The sign shall indicate date, time, and location(s) of the neighborhood meeting.
4. At a minimum, the following shall be covered in the meeting:
 - a. Introduction of the neighborhood meeting organizer (i.e. developer, property owner, etc.);
 - b. Description of the proposed project;
 - c. Existing Features Analysis (slopes, wetlands, trees, natural design constrains); and
 - d. Explanation of how comments made at the neighborhood meeting are used.

Town of Waxhaw staff will attend the neighborhood meeting to observe and answer questions specific to Waxhaw’s planning and approval process.

5. The applicant shall provide to the Town a written summary of the neighborhood meeting. The summary shall include:
 - a. A copy of the mailed notice of the neighborhood meeting (list of persons and addresses)
 - b. An attendance roster or listing of participants;
 - c. A summary of concerns, issues, and problems voiced at the meeting along with the applicant’s responses thereto; and
 - d. A summary of proposed modifications, or site plan revisions, based on the feedback/ concerns from the meeting.

After Town review, this information will be available at Town Hall and at subsequent meetings concerning the project. When practical, comments, ideas, and suggestions presented during the Neighborhood Meeting should be incorporated by the developer into the proposed development.

6. Following the Neighborhood Meeting, the applicant shall have the opportunity to make changes to the application to take into account information and comments received. The applicant shall notify the Zoning Administrator of his/her intent regarding changes to the application within five (5) days following the Neighborhood Meeting. If revised, one or more revised copies of the application shall be submitted to the Zoning Administrator for review. No additional fee shall be required to be paid for making such changes provided the Zoning Administrator receives the revised application within ten (10) days following the Neighborhood Meeting. If a revised application is not received during said ten (10) day period, or if the applicant otherwise notifies the Zoning Administrator in writing that no revised application will be submitted, the Zoning Administrator shall review the original application.

3. Planning Board Review and Recommendation

Once a complete application has been received and reviewed by staff, the Planning Board shall review the Conditional Zoning application. When reviewing an application to rezone property to a conditional zoning district, the Planning Board may request additional information [in addition to that required in Subsections 16.2.2(B), 16.2.2(C), as they deem necessary. The Planning Board may make one of the following recommendations to the Board of Commissioners:

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- A. Recommend approval of the application as requested, or
- B. Recommend approval of the application with fair and reasonable conditions as proposed by the applicant and/or as recommended by the Planning Board.
- C. Recommend denial of the application.

Upon making a recommendation, the Planning Board shall advise and comment on whether the proposed amendment is consistent with any land use plan that has been adopted and any other officially adopted plan that is applicable. The Planning Board shall provide a written recommendation to the Board of Commissioners that addresses plan consistency, a statement of reasonableness, 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 land use plan shall not preclude consideration or approval of the proposed amendment by the governing board.

The Planning Board shall forward its recommendation to the Board of Commissioners within sixty-two (62) days of having first heard the application (except where additional information is requested by the Planning Board as outlined in Section 16.2.2(C)). If a recommendation is not made within sixty-two (62) days, the application shall be forwarded to the Board of Commissioners without a recommendation from the Planning Board.

4. Public Hearing (Conditional Zoning cases are legislative)

The Zoning Administrator shall transmit any decision of the Planning Board to the Board of Commissioners. Once action has been taken by the Planning Board or the time for action by the Planning Board has expired, and subject to the election provisions in section 16.2.5, the Board of Commissioners shall, no later than their next regularly scheduled meeting (unless a later date is agreed to by both the applicant and the Zoning Administrator), hold a public hearing or consider a requested zoning change. Notification of the public hearing shall be made in the following manner:

- A. A notice shall be published in a newspaper having general circulation in Waxhaw once a week, for two (2) successive weeks, the first notice to be published not less than ten (10) days nor more than twenty-five (25) days prior to the date established for the hearing.
- B. At least one (1) notice shall be conspicuously posted on the subject property at least ten (10) days prior to the public hearing. The notice shall be removed only after the public hearing has been held.

- C. A notice of the public hearing shall be sent by first class mail by the Administrator to all property owners within three hundred (300) feet from the exterior boundaries of the proposed development at least ten (10) and no more than twenty-five (25) days prior to the public hearing.
- D. Prior to the public hearing, all fees incurred for the review of the conditional zoning application must be paid in full. Applications with outstanding fees will not be forwarded to the Board of Commissioners.

The Zoning Administrator shall certify that the requirements of this section have been met.

5. **Board of Commissioners Action**

In approving the rezoning application, the Board of Commissioners may attach fair and reasonable conditions to the approval. The applicant must agree to any additional requirements prior to approval or denial by the Board of Commissioners. In no instance shall any of these conditions be less restrictive than any requirements that would pertain to that particular development found elsewhere in a similar zoning district.

Conditional zoning decisions may be made in consideration of identified relevant adopted land use plans for the area, including, but not limited to, comprehensive plans, strategic plans, district plans, area plans, neighborhood plans, corridor plans, and other land-use policy considerations.

The Board of Commissioners may choose to submit the application to the Planning Board for further study. The application may be resubmitted to the Planning Board with any modifications that are agreed to by the applicant. The Planning Board shall have up to forty-five (45) days from the date of such submission to make a report to the Board of Commissioners. Once the Planning Board issues its report, or if no report is issued within that time period, the Board of Commissioners can take action on the application in accordance with this Section

Prior to adopting or rejecting any zoning amendment, the Board of Commissioners shall adopt a statement describing whether its action is consistent with an adopted comprehensive plan and explaining why the Board of Commissioners considers the action taken to be reasonable and in the public interest.

The Board of Commissioners may not vote to rezone property to a conditional zoning district during the time period beginning on a date of a municipal general election and concluding on the date immediately following the date on which the Board of Commissioners holds its organizational meeting following a municipal general election unless no person spoke against the rezoning at the public hearing and no valid protest

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petition under G.S. 160A-368 was filed. If a valid protest petition under G.S. 160A-386 has been filed against a zoning petition which would otherwise have been scheduled for a public hearing during the period beginning on the first day of October prior to a municipal general election, but prior to the new Board of Commissioners taking office, then the public hearing on such petition and any decision on such petition shall both be postponed until after the new Board of Commissioners take office.

6. Uses Within District

Conditional zoning districts shall be “parallel” to general districts. Uses allowed in the corresponding general district shall be permitted in CD districts, provided that they meet all additional conditions associated with the conditional zoning district.

7. Conditions

In approving an application for a rezoning request to a conditional zoning district, the Board of Commissioners upon receiving recommendations from the Planning Board, Staff, and public comments, may specify the location on the property of the proposed Use, the number of units / square footage, 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 rights-of-way and other areas to be dedicated for public purposes, public dedications, and other such matters as the applicant and the Board of Commissioners find appropriate. The applicant will have a reasonable opportunity to consider and respond to any additional requirements prior to approval or denial of the application by the Board of Commissioners. In no instance shall any of these conditions be less restrictive than any requirements that would pertain to that particular development found elsewhere in a similar general zoning district. All conditions must be mutually agreed upon by both the Board of Commissioners and the applicant for the rezoning to take effect, otherwise the proposed rezoning is invalid and the existing zoning shall remain in effect.

8. Effect of Approval

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

- B. If a petition is approved, the petitioner shall comply with all requirements established in the Unified Development Ordinance for the Town of Waxhaw. Only those uses and structures indicated in the approved petition and site plan

shall be allowed on the subject property. A change of location of the structures may be authorized pursuant to Alterations to Approval, Sect. 16.2.9.

- C. Following the approval of the petition for a conditional zoning district, the subject property shall be identified on the Zoning Maps by the appropriate district designation. A parallel conditional zoning shall be identified by the same designation as the underlying general district preceded by the letters “CD” (for example CD-C3).

9. **Alterations to Approval**

Except as provided in this section, a request to change the site plan or the conditions governing an approved conditional zoning district shall be processed in accordance with Section 16.2.2 of this Ordinance as a new application to rezone property to a conditional zoning district.

The Zoning Administrator shall have the delegated authority to approve an administrative amendment to an approved conditional zoning district site plan or to the governing conditions without the requested change having to be approved as a new application in accordance with Section 16.2.2. Such administrative amendments shall include only those changes that (i) do not significantly alter the site plan or its conditions and (ii) do not significantly impact abutting properties.

No administrative amendment may increase the amount of allowed non-residential development by more than ten percent (10%) of the approved square footage or one thousand (1,000) square feet, whichever is less. No administrative amendment (i) may increase the amount of residential development by more than ten percent (10%) of the approved square footage, if a maximum square footage for residential development was imposed, or (ii) may increase the maximum number of allowed dwelling units by more than five percent (5%).

Any request for an administrative amendment shall be in writing, signed by the property owner, and it shall detail the requested change. The applicant must provide any additional information requested by the Zoning Administrator. Accompanying the written request must be the applicable fee for administrative review, if any, that is required by the current Town of Waxhaw fee schedule. Any decision by the Zoning Administrator to approve or deny a request for an administrative amendment must be in writing and must state the grounds for approval or denial. The Zoning Administrator shall always have the discretion to decline to exercise the authority delegated by this section because the Zoning Administrator is uncertain if the requested change would qualify as an administrative amendment or because the Zoning Administrator determines that a public hearing and Board of Commissioners consideration is appropriate under the circumstances. If the Zoning Administrator declines to exercise

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the authority delegated by this section, the applicant can only apply for a rezoning in accordance with Section 16.2.2 of this Ordinance.

Review of approval of a conditional zoning district

It is intended that property shall be reclassified to a conditional zoning district only in the event of firm plans to develop the property. Therefore, no sooner than two (2) years after the date of approval of the petition, the Planning Board may under its own initiation or through direction from the Board of Commissioners examine the progress made toward developing the property in accordance with the approved petition and any conditions attached to the approval. If the Planning Board determines that progress has not been made in accordance with the approved petition and conditions, the Planning Board shall forward to the Board of Commissioners a report which may recommend that the property be classified to another district, including but not limited to the zoning designation assigned to the property prior to the existing conditional zoning.

10. Certificate of Occupancy

No certificate of occupancy for a use listed as a use shall be issued for any building or land use on a piece of property which has received a permit for such particular use unless the building is constructed or used, or the land is developed or used, in conformity with the conditional zoning requirements approved by the Board of Commissioners. In the event that only a segment of a proposed development has been approved, the certificate of occupancy shall be issued only for that portion of the development constructed or used as approved.

11. Twelve-Month Limitation on Re-application

If a request for rezoning to conditional zoning is denied by the Board of Commissioners, a similar application for the same property or any portion thereof shall not be filed until the expiration of a twelve (12) month period from the date of the most recent denial by the Board of Commissioners. This waiting period shall not be applicable where the application for a conditional zoning is substantially different from the original application or the Administrator determines that at least one of the following has occurred:

- A. There has been a significant change in the zoning district classification of an adjacent piece of property.
- B. The Town has adopted a plan that changes policy regarding how the property affected by the amendment should be developed.
- C. Construction or expansion of a road, water line, sewer line, or other such facilities has occurred to serve the property and can comfortably accommodate the intensity of development allowed under the proposed classification.

The term "substantially different" as herein applied shall mean:

- A. The proposed principal use is different than the use contained in the original application; or
- B. The gross floor area of the proposed development is fifty (50) percent or more smaller than contained in the original application.

16.3 PROTEST PETITION

A written petition of protest may be filed with reference to any proposed zoning map amendment in accordance with North Carolina General Statute 160A-385 and 160A-386. A protest petition must 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 one-hundred foot wide buffer extending the entire boundary of each discrete or separate area proposed to be rezoned. An amendment shall not become effective except by a favorable vote of three-fourths (3/4) of all members of the Board of Commissioners. This section shall not be applicable to any amendment that initially zones property added to the territorial coverage of this ordinance as a result of annexation or otherwise.

1. No protest against any proposed change shall be valid or effective unless it 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, and unless it shall have been received by the Town Clerk in sufficient time to allow the town at least two normal work days, excluding Saturdays, Sundays and legal holidays, before the date established for a public hearing on the proposed change or amendment to determine the sufficiency and accuracy of the petition. All protest petitions shall be on a form prescribed and furnished by the Administrator, and such form may prescribe any reasonable information deemed necessary to permit the Administrator to determine the sufficiency and accuracy of the petition.