

## ARTICLE 5

### Amendments to Development Ordinance and Zoning Map

*[Amended Oct. 19, 2015 per Ord. 2015-O-21, ZTA-2015-03]*

*[Amended Nov. 21, 2017 per Ord. 2017-O-18, ZTA-2017-03]*

*[Amended July 17, 2018 per Ord. 2018-O-07, ZTA-2018-03]*

#### 5.1 General

Zoning regulations shall be made in accordance with the City's comprehensive land use plan. The Creedmoor City Board of Commissioners may amend, supplement, modify, or repeal any provision of this ordinance or amend the zoning maps according to the procedure established by NCGS§160A-384. Such amendments shall be evaluated for compliance with the City's Land Use Plan and may require a land use plan amendment to ensure compatibility between the plan and the amendment. Amendments and modifications shall be acted upon by the City Board of Commissioners, after written recommendation from the Planning Board.

#### 5.2 Initiation of Amendments

Proposed changes or amendments to the text of this chapter or to the Official Zoning Map may be initiated by the Creedmoor City Board of Commissioners, the Creedmoor Planning Board, the Board of Adjustment, the Planning, Zoning and Subdivision Administrator, any owner of a legal or equitable interest in land located in the City or its extraterritorial jurisdiction, or any resident of the City or its extraterritorial jurisdiction (NCGS§ 160A-385).

#### 5.3 Amendment Process

##### 5.3-1 APPLICABILITY

This amendment process applies to all amendments to the Creedmoor Development Ordinance or the Official Zoning Map, except that different requirements may be imposed on the amendment process for conditional zonings as set forth in section 5.4

##### 5.3-2 INITIAL APPLICATION PROCESS.

- A. PRE-FILING MEETING. Before filing a petition for an amendment or a request for a zoning study, an applicant shall meet with the Planning, Zoning and Subdivision Administrator to discuss the proposed amendment or request and to become more familiar with the applicable requirements and approval procedures.
- B. NEIGHBORHOOD MEETING. Before filing a petition for an amendment other than single family residential lots, an applicant shall meet with representatives of the neighborhood in which the property for which the map amendment (rezoning) is proposed is located. This meeting shall be held at the pre-application stage to allow the applicant to explain the proposed map amendment (rezoning) and to be informed of the concerns of the neighborhood. The meeting will help the developer address major concerns of the Neighborhood prior to the Public Notification process described in 5.3-4(B) below. The neighborhood meeting should include a presentation of the plan and an opportunity for concerned parties to ask questions and be provided responses to those questions. The Planning, Zoning and Subdivision Administrator should be notified of the time, date, and place of the neighborhood meeting at least five days prior to the meeting.
- C. FILING.
  1. A petition requesting an amendment or a zoning study shall be filed with the Planning Department on a form provided by the Planning, Zoning and Subdivision Administrator.
  2. Applicable fees shall be payable as set forth by the Creedmoor City Board of Commissioners.
  3. Petitions must be submitted by 12:00 noon on the third Friday of the month in order for the petition to be heard at the meeting of the Creedmoor Planning Board scheduled at least 30 days later.
- D. CONTENT OF APPLICATIONS.
  1. Each application shall contain or be accompanied by all information required on the application form provided by the Planning, Zoning and Subdivision Administrator.
  2. Every amendment proposing to change the district boundary lines shall be accompanied by a

metes and bounds description, a survey of the area involved, or reference to existing lots, sufficient in the estimation of the Planning, Zoning and Subdivision Administrator to plot or otherwise identify the amendment on the official zoning maps of the City of Creedmoor.

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.

5.3-3 REVIEW BY THE CREEDMOOR PLANNING BOARD. *[Revised August 27, 2013 per 2013-O-12]*

- A. GENERAL. Upon submission of a request for a Creedmoor Development Ordinance amendment or an Official Zoning Map amendment, the request shall be scheduled for review by the Creedmoor Planning Board. The Creedmoor Planning Board shall hold a meeting to consider the requested amendment(s).
- B. REVIEW – GENERAL. The public meeting shall be conducted in accordance with the rules of procedure of the Creedmoor Planning Board. The Board shall make recommendations to the Creedmoor City Board of Commissioners regarding whether to approve or deny each proposed amendment. When considering an amendment, the Planning Board shall consider the compliance and compatibility of the amendment with the City’s Land Use Plan, Comprehensive Master Plan and other adopted plans for the area affected by the proposed amendment.
- C. NO ACTION BY THE CREEDMOOR PLANNING BOARD. If the Creedmoor Planning Board has made neither a positive nor a negative recommendation on a proposed amendment within 30 days of first considering it, the proposed amendment shall be forwarded to the City Board of Commissioners for consideration. The proposed amendment shall be accompanied by a record of the Creedmoor Planning Board’s comments regarding the amendment and the reasons, if any, for their lack of action.
- D. CONTENT OF RECOMMENDATION AND STATEMENT OF CONSISTENCY. Prior to consideration by the Board of Commissioners of any proposed zoning amendment, the Planning Board shall advise and comment on whether the proposed amendment is consistent with any comprehensive plan adopted by the City. The Planning Board shall provide a written recommendation to the Board of Commissioners that addresses plan consistency and other matters as deemed appropriate by the Planning Board. A comment by the Planning Board that a proposed amendment is inconsistent with any comprehensive plan for the area affected shall not preclude consideration or approval of the proposed amendment by the City Board of Commissioners. (NCGS§160A-383)
- 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 reasonable likely to have a direct, substantial, and readily identifiable financial impact on the member. (NCGS§160A-381(d))

5.3-4 REVIEW BY THE CREEDMOOR CITY BOARD OF COMMISSIONERS.

- A. REVIEW-GENERAL. Following receipt of a recommendation on a proposed amendment, or in the case of no action by the Creedmoor Planning Board as described in section 5.3-3 above, the Creedmoor City Board of Commissioners shall hold a public hearing on the proposed amendment. The public hearing will be scheduled and conducted as provided by the City Board of Commissioners rules of procedure.
- B. NOTIFICATION. The City Clerk shall prepare a public notice as described below that indicates the official receipt of an application for a Creedmoor Development Ordinance amendment or an Official Zoning Map amendment. This notice for publication shall include the following:
  - 1. Brief description of the requested amendment;
  - 2. The time, date, and place at which the request will be considered; and
  - 3. Contact information for staff receiving comments concerning the request.

The notice shall be published in a newspaper of general circulation prior to the date on which the request is to be considered. Publication 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.

If the adoption or modification of the ordinance would result in any of the changes listed in this subsection and those changes would be located five miles or less from the perimeter boundary of a military base, the Clerk shall provide written notice of the proposed changes by certified mail, or by any other written means reasonably designed to provide actual notice, to the commander of the military base or the commander's designee not less than 10 days nor more than 25 days before the date fixed for the public hearing. Prior to the date of the public hearing, the military may provide comments or analysis to the City Board of Commissioners regarding the compatibility of the proposed changes with military operations at the base. If the Board does not receive a response within 30 days of notice, the military is deemed to waive the comment period. If the military provides comments or analysis regarding the compatibility of the proposed amendment with military operations at the base, the Board of Commissioners shall take the comments and analysis into consideration before making a final determination on the amendment. The proposed changes requiring notice are:

1. Changes to the Official Zoning Map
2. Changes that affect permitted uses of land.
3. Changes relating to wireless telecommunication towers.
4. Changes to proposed new major subdivision preliminary plats.
5. An increase in the size of an approved subdivision by more than fifty percent (50%) of the subdivision's total land area including developed and undeveloped land. (NCGS§ 160A-364(b))

When a change is proposed in a zoning boundary or classification of a parcel, notice of the public hearing shall be sent by first class mail to the owner of that parcel and the owners, as shown on the appropriate county tax listing, of all parcels abutting that parcel of land at least ten days before the date on which the request is to be considered. This notice also shall be mailed to the owners of any property located within 500 feet of the property in question at least ten days before the date on which the request is to be considered. The person or persons mailing such notices shall certify to the City Board of Commissioners that proper notice has been given.

The first-class mail notice 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 City elects to use the expanded published notice provided for in this subsection. In this instance, the City may elect to either make the mailed notice provided for above, or may as an alternative elect to publish notice of the hearing as required by NCGS§ 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 that published 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 by first-class mail according to the provisions above. (NCGS§ 160A-384 (b))

When a zoning map amendment (rezoning) is proposed, the City shall, within the same time period before the scheduled public hearing, prominently post a notice of the public hearing on the property proposed for a zoning map amendment (rezoning) or on an adjacent public street or highway right-of-way. When multiple parcels are included within a proposed zoning map amendment (rezoning), a posting on each individual parcel is not required, but the City shall post sufficient notices to provide reasonable notice to interested persons. (NCGS§ 160A-384 (c))

In addition, the subject property shall be posted in a conspicuous location(s) with the time, date, and notice of public hearing. A sign stating such information shall be posted on the subject property ten (10) days before the date on which the request is to be considered.

C. ACTION.

1. Before acting on any proposed amendment, the Creedmoor City Board of Commissioners may consider any recommendation made by the Creedmoor Planning Board, the recommendation

submitted by the Planning, Zoning and Subdivision 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 Creedmoor City Board of Commissioners shall not evaluate the petition based on any specific proposal for the use or development of the property. 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.
3. Upon reviewing all pertinent information, the Creedmoor City Board of Commissioners shall:
  - a. Adopt the proposed amendment;
  - b. Reject the proposed amendment;
  - c. Continue the consideration of the request to their next regularly scheduled meeting or other agreed upon time;
  - d. Refer the proposed amendment back to the Creedmoor Planning Board for further consideration or edits; or
  - e. Modify the proposed amendment.
- D. STATEMENT OF CONSISTENCY. Prior to adopting or rejecting any zoning amendment, the governing board shall adopt one of the following statements which shall not be subject to judicial review:
  1. A statement approving the zoning amendment and describing its consistency with an adopted comprehensive plan and explaining why the action taken is reasonable and in the public interest.
  2. A statement rejecting the zoning amendment and describing its inconsistency with an adopted comprehensive plan and explaining why the action taken is reasonable and in the public interest.
  3. A statement approving the zoning amendment and containing at least all of the following:
    - a. A declaration that the approval is also deemed an amendment to the comprehensive plan. The governing board shall not require any additional request or application for amendment to the comprehensive plan.
    - b. An explanation of the change in conditions the governing board took into account in amending the zoning ordinance to meet the development needs of the community.
    - c. Why the action was reasonable and in the public interest. (NCGS§ 160A-383)
- E. CONFLICT OF INTEREST. A City Board of Commissioners 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. (NCGS§ 160A-381(d); 160A-75)

#### 5.3-5 CITIZEN COMMENTS.

Any resident or property owner in the city may submit a written statement regarding a proposed amendment, modification, or repeal to a zoning ordinance or the Official Zoning Map to the Clerk at least two business days prior to the proposed vote on such change. The Clerk shall deliver such written statements to the Board of Commissioners.

#### 5.3-6 WAITING PERIOD FOR SUBSEQUENT APPLICATIONS.

- A. WAITING PERIOD-GENERAL. When an application for a zoning amendment has been approved or denied by the Creedmoor City Board of Commissioners, no rezoning application covering the same property shall be accepted or considered within 12 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 Creedmoor City Board of Commissioners 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 Planning, Zoning and Subdivision Administrator, who shall review and prepare a recommendation regarding action on the request.

Said recommendation shall be considered by the City Board of Commissioners 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 District Rezoning**

### **5.4-1 GENERAL**

- A. Like general district rezonings, conditional zoning is a legislative process. Unlike general district rezonings, however, a conditional zoning district may be approved with conditions and the approval of a site specific development plan. This process is designed to address unique development scenarios when a development proposal does not fit into a conventional zoning district, but with proper conditions may be desirable and compatible with the surrounding area. Except as otherwise provided in this section, the conditional zoning district rezoning process shall follow the procedures outlined in section 5.3, "Amendment Process." Conditional zoning districts are limited to the following zoning districts:
  - 1. Traditional Neighborhood Development Conditional District ("TND-CD").
- B. Property may be rezoned to a conditional zoning district only in response to a petition submitted by the owners of all of the property to be included in the district.

### **5.4-2 PLANS AND OTHER INFORMATION TO ACCOMPANY PETITION.**

- A. In addition to meeting the requirements of subsection 5.3-2(D), a petition for conditional zoning must include the following:
  - 1. For TND zoning districts, a master plan that meets the requirements subsection 8.4-14, "Traditional Neighborhood Development Conditional District (TND-CD)"; and
  - 2. A list of all conditions proposed by the applicant.
- B. The Board of Commissioners may require more information to be submitted according to the needs of a particular application, but the applicant may rely in the first instance on the recommendations of the Planning, Zoning and Subdivision Administrator as to whether more information than that set forth in subsection 5.3-2(D) should be submitted.
- C. In the course of evaluating the proposed use, the Planning, Zoning and Subdivision Administrator, Planning Board, or the Board of Commissioners may request additional information from the applicant. This information may include, but is not limited to, the following:
  - 1. Proposed number, size, shape, and general location of all structures;
  - 2. Proposed screening, buffers and landscaping over and above that required by these regulations, as well as proposed treatment of any existing natural features;
  - 3. Existing and approximate proposed topography, if available, at four-foot contour intervals or less;
  - 4. Scale of proposed buildings relative to abutting property;
  - 5. Height of proposed structures;
  - 6. Elevation renderings of exterior features of proposed development;
  - 7. Proposed number and location of signs; and
  - 8. Any other information needed to mitigate negative impacts and demonstrate compliance with this Ordinance.
- D. The included proposed master plan and any supporting text shall constitute part of the petition for all purposes under this part.

### **5.4-3 CONDITIONS ON APPROVAL OF PETITION**

- A. In approving a petition for a conditional zoning district, the Board of Commissioners may request that reasonable and appropriate conditions be attached to approval of the petition.
- B. Conditions and site-specific standards shall be limited to those that address the conformance of the development and use of the site to city ordinances and all relevant officially adopted plans. Conditions and site-specific standards may also address the impacts reasonably expected to be generated by the development or use of the site. Any such conditions should relate to the relationship of the proposed use to surrounding property, proposed support facilities such as parking areas and driveways, pedestrian and vehicular circulation systems, screening and buffer areas, the timing of development, street and right-of-way improvements, water and sewer improvements, storm water drainage, the provision of open space, and other matters that the Board of Commissioners may find appropriate or that the petitioner may propose. Such conditions to approval of the petition may include dedication to the City, County or State, as appropriate, of any rights-of-way or easements for streets, water, sewer, or other public utilities necessary to serve the proposed development. The Creedmoor City Board of

Commissioners may approve conditions that impose higher standards than those that would ordinarily apply;

- C. Conditions may not be used to lower or otherwise reduce the minimum standards of the Ordinance, including those standards that would apply were the property not zoned to a conditional district. Conditions may, however, be used to authorize uses that would otherwise not be allowed, and conditions may impose higher standards than those that would apply to the property were it not zoned to a conditional district. Examples of an impermissible lowering of standards include, but are not limited to, using conditions to reduce required lot size, minimum setbacks, required landscaping, or required parking.
- D. The petitioner shall have a reasonable opportunity to consider and respond to any such conditions prior to final action by the Board of Commissioners. Only those conditions mutually approved by the Board of Commissioners and the petitioner may be incorporated into the petition.

#### 5.4-4 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 category, the approved site 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 Official Zoning Map.
- B. If a petition is approved, the petitioner shall comply with all requirements of the Creedmoor City Code of Ordinances, including but not limited to those for obtaining building permits and certificates of occupancy. Only those uses and structures indicated in the approved petition and site plan shall be allowed on the subject property. The location of structures may be changed pursuant to subsection 5.4-5, "Modification of Approval."
- C. Following the approval of the petition for a conditional zoning district, the subject property shall be identified on the Official Zoning Map by the appropriate district designation.
- D. A chronological list of all conditional zoning district rezoning approvals and associated plans and conditions shall be maintained by the Creedmoor Community Development Department.

#### 5.4-5 MODIFICATION OF APPROVAL

Changes to an approved conditional zoning district, including to the conditions attached to the district, shall be treated the same as amendments to the text of this Ordinance or to the official Zoning Map and shall be processed in accordance with the requirements of this article. Notwithstanding the foregoing, the Board of Commissioners may, as part of the conditions imposed on the conditional district, include a list of modifications that may be approved by the Planning, Zoning, and Subdivision Administrator or other appropriate city staff without further review by the Board of Commissioners.

#### 5.4-6 CONDITIONAL ZONING DISTRICTS

The following districts shall be identified as conditional zoning districts and shall be the only districts subject to the procedures detailed in Article 5.4, "Conditional Zoning District Rezoning" of this Creedmoor Development Ordinance:

- A. TRADITIONAL NEIGHBORHOOD DEVELOPMENT CONDITIONAL DISTRICT (TND-CD); See Article 8.4-14.