

## **ARTICLE XX - Amendments**

### **Part 1. General Use District Rezoning and Text Amendments.**

#### **§ 152-320. Amendments in General; Non-Substantive Errors.**

(A) Amendments. Amendments to the text of this chapter (i.e. Aberdeen Code of Ordinances Chpt. 152, "Unified Development Ordinance") or to the Zoning Map may be made in accordance with the provisions of this part, or in the case of non-substantive editorial changes, may be made administratively by the Land Use Administrator, as described in subsection (B).

(B) Non-Substantive Errors. The Land Use Administrator may correct typographical errors, numerical reference errors, spelling errors and errors in section or page numbering and may make other non-substantive editorial changes to the text of this ordinance without formal adoption by the Board of Commissioners, provided the changes necessary to correct such errors do not change the meaning of the ordinance. Any correction made pursuant to this section must be documented to the Board of Commissioners and made a part of the Board of Commissioners' regular meeting minutes.

#### **§ 152-321. Initiation of Amendments.**

(A) Whenever a request to amend this chapter is initiated by the Board of Commissioners, the Planning Board, the Board of Adjustment or the town Administration, the town Attorney or the Planning Staff shall draft an appropriate ordinance and present that ordinance to the Board of Commissioners so that a date for a public hearing may be set.

(B) Any other person may also petition the Board to amend this chapter. The petition shall be filed with the Planning Department and shall include, among the information deemed relevant by the Planning Department:

- (1) The name, address and phone number of the applicant;
- (2) A description of the land affected by the amendment if a change in zoning district classification is proposed;
- (3) Stamped business envelopes (#10) containing the names and addresses of all those to whom notice of the public hearing must be sent as provided in subsection 152-323(C);
- (4) A description of the proposed map changes or a summary of the specific objective(s) of any proposed change in the text of this chapter; and
- (5) A concise statement of the reasons why the petitioner believes the proposed amendment would be in the public interest.

(C) Upon receipt of a petition as provided in subsection (B) above, the Planning Staff shall either:

(1) Treat the proposed amendment as one initiated by the town Administration and proceed in accordance with subsection (A) above if it believes the proposed amendment has significant merit and would benefit the general public interest; or

(2) Forward the petition to the Town Board with or without written comment for a determination of whether an ordinance should be drafted and a public hearing set in accordance with subsection (D) below.

(D) Upon receipt of a proposed ordinance as provided in subsection (A) above, the Town Board may establish a date for a public hearing on it. Upon receipt of a petition for an ordinance amendment as provided in subsection (B) above, the Board may summarily deny the petition or set a date for a public hearing on the requested amendment and order the attorney or the Planning Staff to draft an appropriate ordinance.

**§ 152-322. Planning Board Consideration of Proposed Amendments.**

(A) If the Town Board sets a date for a public hearing on a proposed amendment, it shall also refer the proposed amendment 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 Board at the public hearing on the amendment. However, if the Planning Board is not prepared to make recommendations at the public hearing, it may request the Board to delay final action on the amendment until such time as the Planning Board can present its recommendations.

(C) The Planning Board shall advise and comment on whether the proposed amendment is consistent with any comprehensive plan that has been adopted by the town and any other officially adopted plan that is applicable. The Planning Board shall provide a written recommendation to the Town Board 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 Board.

(D) If no written report is received from the Planning Board within thirty (30) days of referral of the amendment to that board, the Town Board may proceed in its consideration of the amendment without the Planning Board report. The Town Board is not bound by the recommendations, if any, of the Planning Board.

(E) A member of the Planning Board shall not vote on recommendations regarding any zoning map or text amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member.

**§ 152-323. Hearing Required; Notice.** *(Amended 10/26/2015)*

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

(B) The Planning Staff shall publish a notice of the public hearing on any ordinance that amends the provisions of this chapter once a week for two (2) successive weeks in a newspaper having general circulation in the Aberdeen area. The notice shall be published for the first time not less than ten (10) days nor more than twenty-five (25) days before the date fixed for the hearing. This period is to be computed in accordance with G.S. § 160A-364, which provides that the date of publication is not counted but the date of the hearing is.

(C) With respect to all map amendments, the Planning Staff shall mail, by first class mail, written notice of the public hearing to the record owners of all properties whose zoning classification would be changed by the proposed amendment as well as the owners of all parcels of land abutting the property rezoned by the amendment. For purposes of this section, the term "owners" shall mean the persons shown as owners in the Moore County tax records. This notice shall be deposited in the mail at least ten (10) but not more than twenty-five (25) days prior to the date of the public hearing. The staff member mailing such notices shall certify to the Board of Commissioners that the notices have been mailed, and such certification shall be deemed conclusive in the absence of fraud.

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

(E) **Military Base Notice:** 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 (5) miles or less from the perimeter boundary of a military base, the town 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 ten (10) days nor more than twenty-five (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 Aberdeen 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 thirty (30) days of the notice, the military is deemed to waive the comment period. If the military provides comments or analysis regarding the compatibility of the proposed ordinance or amendment with military operations at the base, the governing body of the local government shall take the comments and analysis into consideration before making a final determination on the ordinance. The proposed changes requiring notice are:

- (1) Changes to the zoning map;
- (2) Changes that affect the permitted uses of land;

(3) Changes related to telecommunications towers or windmills;

(4) Changes to proposed new major subdivision preliminary plats; and

(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.  
*(Amended 10/26/2015)*

(F) The Planning staff may take any other action deemed by the Planning Director to be useful or appropriate to give notice of the public hearing on any proposed amendment.

(G) 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 Planning Staff; and

(5) State that substantial changes in the proposed amendment may be made following the public hearing.

(H) The Planning Staff shall make every reasonable effort to comply with the notice provisions set forth in this section. However, it is the Board of Commissioners' intention that no failure to comply with any of the notice provisions, except those set forth in subsection 152-323(B) above, shall render any amendment invalid.

(I) Alternative Notice for Zoning Map Change if More Than Fifty (50) Property Owners Affected.

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

property, shall be notified by first class mail according to the provisions of subsection (C) of this section. The person or persons mailing the notices shall certify to the Board of Commissioners that fact, and such certification shall be deemed conclusive in the absence of fraud.

(J) Fee. A fee shall be paid to the town for each application for an amendment. The fee shall be adopted and periodically amended by the Town Board as needed to cover the costs of advertising and other administrative expenses. A copy of the fee schedule shall be posted in the office of the Planning Department. The Board of Commissioners, Planning Board, Board of Adjustment and town Administration shall be exempt from this fee.

(K) Zoning Amendments Initiated By Someone Other than the Town or the Property Owner.

(1) Except for a town-initiated zoning map amendment, when an application is filed to request a zoning map amendment and that application is not made by the owner of the parcel of land to which the amendment would apply, the applicant shall certify to the board of commissioners that the owner of the parcel of land as shown on the Moore County tax listing has received actual notice of the proposed amendment and a copy of the notice of public hearing.

(2) Actual notice of the proposed amendment and a copy of the notice of public hearing required under subsection (K)(1) of this section shall be by any manner permitted under G.S. § 1A-1, Rule 4(j). If notice cannot with due diligence be achieved by personal delivery, registered or certified mail, or by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2), notice may be given by publication consistent with G.S. § 1A-1, Rule 4(j1). This subsection applies only to an application to request a zoning map amendment where the application is not made by the town or the owner of the parcel of land to which the amendment would apply.

**§ 152-324. Board of Commissioners Action on Amendments.**

(A) At the conclusion of the public hearing on a proposed amendment, the Town Board 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) Prior to adopting or rejecting any zoning map or text amendment, the Board shall adopt a statement describing whether its action is consistent with any officially adopted comprehensive plan and any other officially adopted applicable plan and explaining why the Board considers the action taken to be reasonable and in the public interest. This statement is not subject to judicial review.

(C) A Board member shall not vote on any zoning map or text amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member.

**§ 152-325. Ultimate Issue Before the Board on Amendments.**

In deciding whether to adopt a proposed amendment to this chapter, the central issue before the Town Board is whether the proposed amendment advances the public health, safety or welfare. All other issues are irrelevant, and all information related to other issues at the public hearing may be declared irrelevant by the mayor and be excluded. In particular, when considering proposed general district rezonings:

(1) The Board 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 Board 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; and

(2) The Board 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.

**§ 152-326. Reconsideration of Zoning Map Amendments.**

Whenever the Board of Commissioners holds a public hearing on an application for a zoning map amendment initiated by a party other than the town itself (i.e. the Board of Commissioners, the Planning Board, Board of Adjustment or town Administration), and on the day of or after the public hearing either the applicant withdraws the application or the Board of Commissioners approves or denies the rezoning, then the town will not accept an application for a zoning map amendment affecting the same property or any portion thereof submitted by any party other than the town itself within one (1) year from the date such application was withdrawn, approved or denied.

**§ 152-327. Citizen Written Statements.**

Written statements received from the public by the Town Clerk prior to a public hearing for a text or map amendment shall be provided to the Board of Commissioners. If the amendment combines a legislative rezoning with any other quasi-judicial matter such as a conditional use district rezoning or conditional use permit, only the names and addresses of the commenters and not the substance may be provided to the board prior to the hearing.

**Part 2. Conditional Zoning District Rezoning.**

**§ 152-328. Plans and Other Information to Accompany Petition.**

(A) Property may be rezoned to a conditional zoning district only in response to and consistent with a petition submitted by the owners of all of the property to be included in the district. A petition for conditional zoning must include a site plan that complies with the requirements of appendix A and a master plan that specifies any proposed rules, regulations, and conditions and any proposed ordinances that will govern the development and use of the property in conjunction with the requirements of this Unified Development Ordinance and/or in lieu of specified portions of this Unified Development Ordinance.

(B) The Town Board may allow less information or 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 Administrator as to whether more or less information than that set forth in appendix A should be submitted.

(C) In the course of evaluating the proposed use, the Land Use Administrator, Planning Board or the Board of Commissioners may request additional information from the petitioner. This information may include the following:

- (1) Proposed number 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 buildings relative to abutting property;
- (5) Height of structures;
- (6) Exterior features of proposed development;
- (7) Proposed number and location of signs; and
- (8) Any other information needed to demonstrate compliance with this chapter.

(D) The site plan and any supporting text shall constitute part of the petition for all purposes under this part.

(E) The Land Use Administrator or his or her designee may require the petitioner to submit more than one copy of the petition and site plan in order to have enough copies available to circulate to other town departments or other government agencies for review and comment.

**§ 152-329. Required Community Meeting Before Public Hearing.**

(A) Before a public hearing may be held on a petition for a conditional zoning district, the petitioner must file with the Land Use Administrator a written report of at least one community meeting held by the petitioner. The report shall include, among other things, a listing of those persons and organizations contacted about the meeting and the manner and date of contact, the date, time and location of the meeting, a roster of the persons in attendance at the meeting, a summary of issues discussed at the meeting, and a description of any changes to the rezoning petition made by the petitioner as a result of the meeting.

(B) At a minimum, notice of the meeting shall be given to the same property owners that are entitled to first class mail notification of the public hearing on the conditional zoning district application as prescribed in section 152-323, "Hearing Required; Notice." Notice shall also be given to any homeowners associations that have jurisdiction over any property within 500 feet of the subject property.

(C) In the event the petitioner has not held at least one meeting pursuant to this section, the petitioner shall file a report documenting efforts that were made to arrange such a meeting and stating the reasons such a meeting was not held.

(D) The adequacy of a meeting held or report filed pursuant to this section shall be considered by the Board of Commissioners but shall not be subject to judicial review.

**§ 152-330. Approval of Conditional Zoning District.**

(A) Conditional zoning district decisions are a legislative process subject to judicial review using the same procedures and standard of review as apply to general use district zoning decisions.

(B) In considering any petition for a conditional zoning district, sections 152-320 and 152-322 through 152-326 shall apply. Section 152-327 shall apply to conditional zoning district petitions to the extent permitted by G.S. § 160A-385.

**§ 152-331. Conditions on Approval of Petition.**

(A) In approving a petition for the reclassification of property to a conditional zoning district, the Planning Board may recommend and 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 town 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 the petitioner may propose. Such conditions to approval of the petition may include dedication to the town, 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 Board of Commissioners may approve conditions that vary, lower or impose higher standards than those that would ordinarily apply were the property at issue rezoned to something other than a conditional zoning district.

(C) 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.

**§ 152-332. 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 town Zoning Map.

(B) If a petition is approved, the petitioner shall comply with all requirements of the Aberdeen Town Code, including those for obtaining a building permit and certificate 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 section 152-333, "Modification of Approval," provided that changes to the site plan layout will not increase the number of structures.

(C) Following the approval of the petition for a conditional zoning district, the subject property shall be identified on the town Zoning Map by the appropriate district designation. A parallel conditional zoning shall be identified by the same designation as the underlying general district followed by the letter "C" (for example a General Commercial Conditional Zoning District would be designated as "GC-C").

**§ 152-333. Modification of Approval.**

Changes to an approved petition for conditional zoning or to the conditions attached to an approved petition for conditional zoning 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 Town Board may, as part of the conditions imposed on the conditional district, include a list of modifications that may be approved by the Land Use Administrator or other appropriate town staff without further review by the Town Board.