

## Section 15 Amendments

### Rezoning with a Development Plan Procedure Overview

1. Rezoning Application and Development plan Filed with Planning Department.
2. Review by Departments.
3. Zoning Committee of Planning Commission Hearing on Rezoning and Development Plan.
4. Governing Body Hearing on Rezoning and Development Plan.

### Rezoning with a Development Plan Procedure Overview

#### Rezoning Approved

1. Site Plan process can begin at any time.
2. Site Plans must comply with Development Plan.

#### Rezoning Denied

1. Zoning remains unchanged.
2. Development Plan invalid.

### 15.1 Amendments Defined

Rezoning is a procedure to process amendments to the zoning district boundaries of the official zoning map. Text changes may also be made to the text of the adopted zoning ordinance. Both procedures are referred to as "amendments" in this Section.

### 15.2 Amendments Procedures

#### 15.2.1 Application

Application forms for map amendments are available in the City-County Planning Department. A zoning map amendment may be initiated by the Governing Body, the Planning Commission, the Board of Adjustment, the Planning Department, or any citizen.

Such completed applications shall consist of all information required by the application and the specified filing fee. A completed application may be filed with the Planning Department at times specified by the Planning Department.

Zoning text amendment proposals that are not initiated by the Planning Department staff or Governing Body, should be submitted to the Planning Department for a staff conference prior to official submittal in order to clarify form and language.

*This paragraph City Only:* Rezonings must correspond with the boundary lines of existing platted lots or tracts. If they do not, approval of a subdivision plat showing boundaries corresponding to the rezoning must be requested. All lots created by such plat must be useable. If not approved prior to a rezoning, the necessary subdivision(s) shall be requested after a rezoning. Final plat approval of such subdivision shall be considered a condition of approval of any rezoning in cases where the zoning boundaries do not follow existing platted lot lines. Replatting is not required for off-site property being used to meet zoning requirements and included within a rezoning.

*This paragraph County Only:* If the boundaries of a rezoning request stop short of an exterior property line, that portion of the property outside that boundary must be sub-dividable and/or developable as per both the existing zoning on the property and other requirements of the ordinance.

All zoning requirements must be capable of being met within the boundaries of the area being rezoned. If they cannot, the rezoning must be expanded to include necessary property being used to meet zoning requirements. This requirement shall not be applied on any tract seeking rezoning to Mixed Use (MU) adjoining an existing Mixed Use (MU) zoned property if the property seeking the new MU designation represents an expansion of the existing MU project, and meets the requirements of Section 4B.2.7.

If the boundaries of a rezoning request in process are modified so as to 1) remove property from the request, and 2) have the effect of separating other adjoining properties from the boundaries of the modified request, that change will be considered a substantial change from the original request and shall result in the modified request being considered a new rezoning request and requiring resubmittal with a new application and applicable fees.

#### 15.2.2 Notification

The application shall be reviewed for completeness by the Planning Department. Copies of the application shall be referred to appropriate Government Departments for review. Required public hearings to consider the application shall be scheduled by the Planning Department. Public hearing notifications shall be made in accordance with NCGS 160A-364 and 384 and NCGS 153A-323 and 343. Among other things, the General Statutes require notification of property owners within 100 feet of the property under consideration and published notices in a newspaper. Durham Planning Department procedures specify that notification may be sent to property owners within 600 feet of any

property under consideration outside the Durham City limits and within 300 feet of any property under consideration inside the Durham city limits. Notification may also be sent to an officer of all known neighborhood groups located within 1,000 feet of the property under consideration. The Planning Department may also install a placard to identify the property under consideration.

### 15.2.3 Action by the Planning Commission

1. **General Procedures:**The Planning Department shall forward completed map amendment and text amendment requests and any related materials to the Durham Planning Commission [Commission] or a committee of the Commission for a public hearing and recommendation. The public hearing notification shall be in conformance with Section 15.2.2. The Commission shall make its recommendation within 90 days of its initial public hearing, except where the time periods for a recommendation are altered, as in the case of expedited hearings and changed applications. When a recommendation is not made within the time periods established in this subsection, the Governing Body may process the request without a Commission recommendation. *This Sentence City Only:* The initial zoning of property in Durham County that has been annexed to the City, where the proposed zoning is the same as it was in Durham County, shall not require a Commission hearing or recommendation.
2. **Changed Application:**If the applicant makes significant changes to the application for an amendment after the Commission has made its recommendation, the Planning Director may refer the modified request back to the Commission for an additional public hearing. In such case, the Commission shall make a recommendation to the Governing Body within 90 days of the public hearing on the changed application, or within 6 months of the initial public hearing on the first application, whichever occurs first. If a recommendation is not made within this time frame, the Governing Body may process the request without a recommendation from the Commission. Additional modifications that would extend the Commission's consideration beyond 6 months shall be the basis for an Administrative Withdrawal in accordance with Section 15.3.7.
3. **Expedited hearings-** If the Governing Body has set an expedited hearing concerning a request, in accordance with Section 15.2.4, a public hearing before the Commission shall be held at the first available hearing date or prior to the hearing before the Governing Body. If the Commission fails to make a recommendation within that time period, the Governing Body may process the request without a recommendation from the Commission. *This Sentence County Only:* In no event may the Governing Body hearing occur less than 30 days after the Commission has received the request for the expedited hearing.

### 15.2.4 Action by the Governing Body

1. Before taking action on an amendment request, the Governing Body shall consider any recommendations of the Planning Commission, [Commission] and of staff agencies, and shall conduct a public hearing where interested parties may be heard. The public hearing notification shall be in conformance with Section 15.2.2. In scheduling the public hearing, the Governing Body shall give consideration to allowing adequate time for members to receive copies of the draft minutes of the Commission's deliberations on the proposed amendment prior to the public hearing by the Governing Body.
2. The Governing Body, in situations in which it determines certain standards have been met, may expedite the hearing process on a proposed or prospective text or map amendment. The Governing Body may consider a written request from a potential applicant, or from staff, requesting an expedited hearing process. The request shall identify and support the reasons for such expedited consideration. In order to grant the request, the Governing Body must find that at least one of the criteria below have been met:
  - a. The amendment is a text amendment that addresses issues raised in threatened, actual or potential litigation against the jurisdiction that make expedited consideration necessary.
  - b. Deadlines set by the local, State or Federal government for receipt of application for needed funding, designation or other regulations concerning the property make expedited consideration necessary.
  - c. The prospective map or text amendment results from an emergency beyond the control of the applicant, such as response to a disaster.
  - d. The prospective text or map amendment addresses an urgent matter of public health or safety.
  - e. There are special circumstances that will have a substantial negative impact on the development which could not have reasonably been anticipated and which make expedited consideration necessary.

An expedited hearing is not an available option when a land use plan amendment is also required, or when full staff review, including Traffic Impact Analysis, cannot be provided by the agenda deadline for the required Zoning Committee hearing.

Governing Body Action: The Governing Body may: (1) approve the request, (2) deny the request, or (3) send the request back to the Planning Commission or a special committee of the Governing Body for additional consideration. In the case of zoning map amendments, the governing body may approve the request at a classification less intense than requested with the consent of the applicant. A listing of the zoning districts in order of lower to higher intensity is found in Section 1 of the Ordinance. Approval of a request gives the applicant the ability to proceed with any additional required approvals.

### **15.2.5 Subsequent Amendments**

When the Governing Body has taken action on an amendment, no new application may be filed for a similar amendment until at least 12 months have elapsed since the date of the previous action. The Planning Department may waive this requirement if the application has been substantially modified or there has been a significant change in the facts or circumstances since the previous request.

### **15.3 Rezoning with a Development Plan**

#### **15.3.1 Defined**

The Development Plan procedure is established so that property owners or their agents may provide more information than would typically be found in a rezoning petition. The Development Plan is provided to assure compatibility with adjacent uses, to assure design flexibility, to promote efficient use of the land and to protect the environment.

#### **15.3.2 Applicability**

The Development Plan may be used by the petitioner in any zoning district; however, the Development Plan shall be required in the following districts: PDR, SC and I-1. The Development Plan shall become a part of the rezoning petition and shall be reviewed concurrently with the rezoning petition.

#### **15.3.3 Procedure**

1. When proposed, the Development Plan shall be included with the rezoning petition. The number of required copies of plans shall be specified in the rezoning application.
2. Where the applicant has elected to use the Development Plan, the letter D shall follow the proposed zoning district designation. If approved, the letter D shall remain as a part of the zoning designation of the property.
3. Completed Development Plan applications shall be processed in a manner identical to other zoning map amendment requests.

#### **15.3.4 Coordination with Site Plans**

Approval of zoning with a Development Plan shall enable the owner or an authorized agent of the owner to prepare a site plan in conformance with the zoning and Development Plan for the property. The site plan may be prepared for the entire property or phases of the development project. The site plan shall conform to the requirements for site plans found in the Site Plans Section of this ordinance.

Site plans shall be checked for conformity with the Development Plan. If the site plan represents a significant departure from the approved Development Plan, an amendment to the Development Plan is required. The modification shall be treated as if it were an original application for a zoning amendment..

#### **15.3.5 Coordination with Special Use Permits**

Approval of zoning with a Development Plan shall cause the property to be exempt from any requirements for Minor Special Use Permits issued by the Board of Adjustment (BOA) for the physical development of the site. For example, property zoned with a development plan specifying a building height typically approved by the BOA, would not be required to obtain a Minor Special Use Permit prior to site plan approval and construction of the building at the specified height. This exemption does not apply to requirements for a Major or Minor Special Use Permit for certain uses of a property. For example, a Day Care use in an I-3 zone would still require Minor Use Permit from BOA.

#### **15.3.6 Required Information**

##### *1. City Jurisdiction:*

##### **Changes to Development Plans**

When proposed development on a site covered by an approved development plan represents a significant change from all or a portion of that plan, the change must be submitted as a zoning amendment to the City Council. If the change is to a portion of the previous plan, and the remainder of the previous plan can be developed under the original plan, a development plan may be approved for just the portion that is being changed. In such cases, the portions still covered by the previous plan shall be indicated on the new plan. When the remainder of the previous plan cannot be developed under the original plan the entire site covered by the previously approved development plan must be submitted for amendment. In addition, the entire site must be submitted for rezoning when such site, as modified by the proposed change, differs from the previously-approved development in any of the following ways:

- where there is either an increase of any amount, or a cumulative decrease of more than 20 per cent, in total density within a residential development;
- where there is a cumulative increase of more than 5 per cent or cumulative decrease of more than 25 per cent in total square footage of occupied buildings within a nonresidential development;
- where a dedication is reduced or eliminated;

- where a portion of the previously-approved site is rezoned from one general category of zoning districts to another (i.e., single-family residential to office, office to commercial, commercial to industrial, etc.). Changes from single-family to multi-family residential shall be considered a change in general category.
- where there is a significant change in location or configuration of access points to the development, or significant changes to previously-shown public road improvements.

Notwithstanding these requirements, the Council may rezone less than the entire site when transfers of property to ultimate purchasers in residential areas make the rezoning of an entire previously approved development plan impossible. The Council may also, in its discretion, require the rezoning of an entire previously-approved site.

*City and County Jurisdiction:*

Development Plans shall be prepared by a Professional Engineer, Professional Architect or Registered Landscape Architect.

2. Development Plans shall include the following information:
  - a. Vicinity map showing north arrow, scale, name of project, tax map and property number.
  - b. Boundaries of the property using metes and bounds and the angle of departure of adjoining property lines.
  - c. Acreage in the tract and amount to be developed.
  - d. Zoning categories, overlay zones of the subject property and adjacent properties, and the required setbacks of the site.
  - e. Owners of the property and adjacent properties.
  - f. Land uses of adjacent properties, and major improvements on the site and within 50 feet of the boundary of the site.
  - g. Generalized floodplain locations and as well as existing stream beds, and shorelines if any and any information required by Section 11 of this ordinance, such as floodway locations, stream buffers, wetlands, and steep slopes.
  - h. Existing topography.
  - i. Existing property lines to be removed.
  - j. Existing rights-of-way with street names, utility easements, and any other easements either on site or adjacent to the site.
  - k. Existing water and sewer lines and storm water drainages.
  - l. Proposed schematic land use plan illustrations indicating the general locations of residential and nonresidential improvements, including the type, number of stories and maximum density of the dwellings, if any, the generalized type of nonresidential uses, (e.g.: commercial, office, industrial), building envelope, maximum building height and maximum floor area. [See Subsection "t" for additional requirements associated with PDR development plans.]
  - m. Proposed recreation areas and open space reservations and general location as well as location of Durham Historic Sites and/or natural inventory sites, and other areas of unusual natural or environmental significance as defined by Section 11 of this ordinance.
  - n. Schematic landscape plan including plant material save areas and areas for replanting. The plan should include the information meeting the requirements of Section 10 of this ordinance. The standards of Section 10 may require a tree survey and an identification of tree coverage areas.
  - o. Proposed circulation pattern which includes generalized locations of streets and pedestrian paths. [See subsection "t" for additional requirements associated with PDR development plans.]
  - p. Proposed utility locations.
  - q. In nonresidential or multifamily districts, the development plan must indicate how building and site design relate to the surroundings. This shall be done with building elevations, conceptual design illustrations, or written descriptions of design principles used; or a combination of the above items. Such elevations, illustrations and/or written descriptions shall show how the building design will relate to its surroundings in three main areas: the context area, the building details, and special considerations. These three items are more particularly described below:
    - Context area:* The proposed development must be described as to how it relates within a specific context area around the site [determined at the time of the pre-application meeting with staff, generally defined as the notice area required for the rezoning and street approaches to the site in the immediate vicinity of the site.] A description must be given as to the features of the area covering natural or planted landscaping; roadway vistas and views of buildings; historical sites and features; signage; parking areas; building setback, height, mass and scale; and building architecture.
    - Building details* - The proposed development must be described in terms of its general architectural styles, roof lines, entryways, windows, exterior building materials, and other distinctive architectural features such as towers, arches, pillars, etc. particularly, as these details are visible from the context area.
    - Special considerations* - The proposed development must be described in terms of its relationship to any special considerations of the site or context area. These considerations include transition in the character of an area, established architectural styles present in the area, and design considerations relevant to the

effect of lighting, signage, and color schemes on surrounding properties.

The elevations, illustrations and/or descriptions shall be of sufficient detail to provide clear guidance for the review of such features on subsequent site plans. Individual details may be revised at the time of site plan approval as long as the revisions result in a comparable effect consistent with the intent of the features.

- r. Greenways, trails, open spaces, and railroad corridors designated for preservation on a plan adopted by the Governing Body.  
Land intended for dedication or reservation shall be designated as such on development plans in accordance with requirements for dedication and reservation of recreation and open space areas in Sections 5M and 7D of the Merged Durham Subdivision Ordinance. The petitioner may add other information if the petitioner wishes. Supporting information may include details pertaining to the proposed improvements, lot dimensions, landscaping details, building footprints, building elevations and other such information as appropriate.
- s. A statement that indicates whether grading for the tract will occur for multiple lots at one time (i.e., mass grading) or on a lot-by-lot basis. Projects proposing to use mass grading shall provide justification for why mass grading of the tract is required in order to produce the project.
- t. Additional requirements for PDR PLANS: Realizing that PDR Development Plans frequently depict one or more subcomponents, the following additional requirements pertain to PDR Development Plans. If the project is not divided into subcomponents, this information is required for the single site.

The PDR Development Plan shall include:

- Graphics, including proposed typical building footprints on typical lots, typical building profiles and elevations, with designation of public/private streets and typical street cross sections.
- The gross and net residential densities for each subcomponent.
- The proposed maximum impervious surface coverage for nonresidential and multi-family uses in each subcomponent of the plan, expressed as a percentage of the subcomponent's area.
- The number of dwelling units, type of unit mix, and residential density of each residential subcomponent of the plan.
- The identification and size of floodway and flood fringe acreage to be used to transfer densities and the number of units to be transferred from each area.
- For nonresidential subcomponents: the type of nonresidential uses, building envelope, maximum building height and maximum floor area.
- The maximum size, building envelope dimensions, height, and minimum separation distance of all residential buildings or structures. Single-family proposals shall be exempt from providing height information.
- The percentage of the total site area to be devoted to publicly owned open space and recreation areas as well as privately held open space and recreation areas and the square footage of these uses.
- The proposed circulation pattern within each subsection of the PDR plan.
- The proposed utility locations within each subsection of the PDR plan.

With any Development Plan, the petitioner may add other information, if the petitioner wishes. Supporting information may include details pertaining to the proposed improvements, lot dimensions, landscaping details, building footprints, building elevations, and other such information as may be appropriate. Significant modifications to the Development Plan following a public hearing by either the Zoning Committee or the Governing Body may warrant another public hearing by the body that held the last hearing. Conditions placed on a Development Plan by the applicant are considered to be requirements and fully enforceable as ordinance requirements.

#### **15.3.7 Administrative Withdrawal**

The Planning Director may withdraw applications due to the failure of the applicant to submit required information in a timely manner.

#### **15.3.8 Period of Validity**

The Development Plan will run with the zoning of the property and be valid until the zoning map is amended.

### **15.4 Valid Protest Petition**

#### **15.4.1 Defined**

A petition in opposition to a zoning map amendment (rezoning) shall be considered a "valid protest petition" if the petition meets the requirements of NCGS 160A-385. In particular, the petition must:

1. Contain signatures of property owners comprising 20% of either: (1) the area of the property under consideration, or (2) the area within 100 feet of either side or the rear of the subject property, or (3) the area directly across the street from the subject property and extending 100 feet from the street frontage of the properties across the street.

2. Contain the information required on the form supplied by the Planning Department.
3. Be submitted on time.

#### **15.4.2 Procedure**

A form for a valid protest petition is available in the Planning Department.

Completed petitions shall be submitted to the appropriate Clerk's office (City Clerk or Clerk to the Board of County Commissioners) at least 4 working days prior to the day of the public hearing held by the Governing Body (For example, the Monday before a Monday public hearing).

The Attorney for the jurisdiction shall determine if the petition meets the criteria for classification of "valid protest petition". The Clerk shall inform the Governing Body that a petition has been filed and indicate the determination by the Attorney whether the petition is valid or invalid.

Zoning map amendments for which a valid protest petition has been filed shall require a 3/4 vote of the Governing Body for approval rather than a simple majority.

### **15.5 Deferral and Withdrawal of an Application for Amendment**

#### **15.5.1 Deferral Requests Approved by the Planning Department**

A request for a deferral of an amendment may be made by an interested party. Deferrals may be granted by the Planning Department if the request for deferral and the reasons for the request are made in writing to the Planning Department at least 12 working days, not counting holidays, prior to any meeting where the item is to be considered. Each request for deferral must be accompanied by two sets of mailing labels imprinted with the names and addresses of all previously notified property owners and a fee equivalent to the postage required to renotify the property owners. The deferral request may be for a maximum of one month. Any individual or group may not seek more than one deferral for each amendment request. No more than 2 deferrals shall be allowed.

#### **15.5.2 Other Deferral Requests**

If the Zoning Committee of the Planning Commission or the Governing Body has not yet rendered a decision on an application, a deferral may be granted at any time upon a majority vote of the appropriate body. The deferral requires notification of all property owners previously notified of the amendment. If the deferral is made at the request of the applicant, then the applicant shall provide the mailing labels and fee specified above. Notifications of deferrals shall be mailed within 7 days of the vote for deferral.

#### **15.5.3 Withdrawal Requests**

The applicant for an amendment may automatically withdraw the application provided that a written request stating the reason for the withdrawal is received by the Planning Department at least 12 working days not counting holidays, prior to the public hearing. The request must be accompanied by mailing labels imprinted with the names and addresses of the previously notified property owners and a fee sufficient to cover the postage for the re-notification.

The Governing Body may vote to allow the applicant to withdraw an application for an amendment at any time.

#### **15.5.4 Re-submittal of Withdrawn Applications**

No previously withdrawn application may be resubmitted until at least 6 months have elapsed since the date of withdrawal. The Planning Department may waive this requirement if the application has been substantially modified or if there has been a significant change in facts or circumstances since the application was withdrawn.