

ARTICLE XX AMENDMENTS

Section 320 Reserved

Section 321 Initiation of Amendments.

(a) An amendment to the text of this ordinance or to the zoning map may be initiated by the Town Board, the planning board, the planning staff, or any other interested person. [Conditional Zoning district request shall be made in accordance with the provisions of Section 327](#)

(b) Any petition for rezoning property must be signed by the petitioner, who shall indicate the capacity in which he filed the petition. In the event the party filing the petition is someone filing the same on behalf of the owner, such party shall attach his authority to execute said petition on behalf of the owner to the petition. If the applicant is seeking to have rezoned less than the entire lot or tract, the application for the rezoning shall be accompanied by a survey map and description. If the applicant is seeking to have rezoned an entire lot or tract for which a tax parcel identification number is assigned, said tax parcel identification number shall be sufficient for public notice of the area requested for rezoning.

(c) Notice of the planning board's consideration of a proposed minor map amendment shall be sent to the owner of the property to be rezoned and to adjoining property owners as provided in Subsection 22(e).

(d) Unless the Town Board finds that there have been substantial changes in conditions or circumstances bearing on the application, the Town shall not accept for consideration a petition for a text or map amendment if:

(i) Within one year prior to the date the petition is (a) denied by the Town Board, or (b) withdrawn by the applicant after planning board consideration, or (c) the Town Board has approved a rezoning on the same parcel to a more restrictive classification than requested,

(ii) Within one year prior to the date the petition is submitted, the Town Board has denied a substantially similar request for a text amendment.

Section 322 Planning Board Consideration of Proposed Amendments.

(a) Every proposed map or text amendment shall be referred to the planning board for its consideration.

(b) The planning board shall endeavor to review the proposed amendment in such a timely fashion that any recommendations it may have can be presented to the 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 Town Board may not take final action approving a proposed amendment until it has received the recommendation of the planning board or until forty-five days from the date of referral to the planning board, whichever occurs first. However, the Town Board is not bound by the recommendations, if any, of the planning board.

(d) A Planning 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.

(e) Upon making a recommendation, the Planning Board shall advise and comment on whether the proposed amendment is consistent with any comprehensive plan that has been adopted 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 governing board.

Section 323 Hearing Required; Notice.

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

(b) A notice of the public hearing on any ordinance that amends the provisions of this ordinance (including the zoning map) shall be published once a week for two successive weeks in a newspaper having general circulation in the county. The notice shall be published for the first time not less than ten days nor more than twenty-five days before the date fixed for the hearing. In computing this period the date of publication shall not be counted but the date of the hearing shall be.

(c) At least ten (10) calendar days prior to the public hearing, a notice of the proposed zoning change shall be sent by first class mail to all adjacent and abutting property owners. In the case of large-scale rezonings (more than fifty (50) properties owned by a total of at least fifty (50) different property owners), the Town may elect to publish notice of the hearing per Section 323(b), provided that each of the advertisements 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 circulations 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 property tax listing for the affected property, shall be notified by first class mail.

(d) One or more notices of the public hearing shall also be posted on the property rezoned by the proposed amendment or immediately adjacent to the property on an

adjacent street or highway. 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 parties. The planning staff shall also take any other action deemed by the planning staff to be useful or appropriate to give notice of the public hearing on any proposed amendment.

(e) 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 department; and
- (5) State that substantial changes in the proposed amendment may be made by the board of commissioners following the public hearing.

(f) The planning staff shall make every reasonable effort to comply with the notice provisions set forth in this section. However, it is the Board's intention that no failure to comply with any of the notice provisions that are not statutorily required shall render any amendment invalid.

Section 324 Board Action on Amendments.

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

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

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

(d) A Town Board member shall not vote on any zoning map 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.

(e) A written petition of protest may be filed with reference to any proposed change or amendment to the zoning map. In case of a protest against such change, an amendment shall not become effective except by four-fifths (4/5) vote of the Town Board. For purposes of this subsection, vacant positions on the Board and members who are excused from voting shall not be considered 'members of council' for calculation of the requisite three-fourths vote. To qualify as a protest, the 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 100-foot-wide buffer extending along the entire boundary of each discrete or separate area proposed to be rezoned. A street right-of-way shall not be considered in computing the 100-foot buffer area as long as that street right-of-way is 100 feet wide or less. When less than an entire parcel of land is subject to the proposed zoning map amendment, the 100-foot buffer shall be measured from the property line of that parcel. In the absence of evidence to the contrary, the Town may rely on the county tax listing to determine the 'owners' of potentially qualifying areas. This section shall not be applicable to any amendment which initially zones property added to the territorial coverage of this Ordinance as a result of annexation or otherwise.

Section 325 Ultimate Issue Before Board on Amendments.

In deciding whether to adopt a proposed amendment to this ordinance, the central issue before the 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 chair and excluded. In particular, when considering proposed map amendments:

- (1) For all rezoning amendments with the exception of requests for conditional use zoning submitted in accordance with Section 327, the Board shall not rely upon 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.
- (2) For amendments requesting a parallel conditional use zoning district, the Board can consider a specific use for the parcel(s), and review a site specific development plan as part of the amendment process. In accordance with Section 54A and 54B, the use specified by the applicant, will be noted on the conditional use permit, if the rezoning of the property(ies) and the conditional use permit application are approved by the Town Board. No other use shall be allowed, once approved by the board.
- (3) 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.

Section 326 Time for Challenges to Amendments.

An action challenging an ordinance that changes the zoning classification of any property must be commenced within 60 days after the effective date of such ordinance as provided in S.L. 1987 Chapter 604.

Section 327 Conditional Zoning

- (a) There are circumstances in which a general zoning district designation allowing a use by right would not be appropriate for a particular property even though the use itself could, if properly planned, be appropriate for the property consistent with the objectives of this Ordinance and adopted land development plan, comprehensive plan, corridor plans, small area plans, and other land use policy documents. The rezoning process established in this Section provides for the accommodation of such uses by a reclassification of property into a conditional zoning district, subject to additional conditions which ensure compatibility of the proposed use with the use and enjoyment of neighboring properties. A conditional zoning district allows a particular use or uses to be established only in accordance with specified standards and conditions tailored to each individual development project. This is a voluntary rezoning procedure that is intended for firm development proposals. It is not intended or suited for securing early zoning for tentative proposals that may not be undertaken for some time.
- (b) The review and approval process for conditional zoning petitions involves a legislative hearing and legislative decision by the Town Board. The review of conditional zoning petitions shall be undertaken in accordance with the provisions of Sections 321 through 325.
- (c) Property may be placed in a conditional zoning district only in response to a petition by the owners of all the property to be included. A petition for conditional zoning shall include:
 - (1) A master site plan prepared in accordance with Appendix A;
 - (2) Written supporting documentation that specifies the actual use or uses proposed for the property, and
 - (3) Proposed rules, regulations, and conditions that, in addition to all predetermined requirements of this Ordinance, will govern the development and use of the property.
 - (4) A statement analyzing the reasonableness of the proposed rezoning.
- (d) Conditional zoning districts, as established in Section 141B, parallel general use zoning districts. Only those land uses (including uses by right, special uses, and conditional uses) permitted in a general use zoning district to which a conditional zoning district corresponds shall be allowed. All requirements of any corresponding general use district and all other requirements of this Ordinance apply to a conditional zoning district except to the extent that the approved rules,

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regulations, and conditions included in the petition for rezoning are more restrictive than the general use district requirements.

(e) **Community Informational Meeting.** During its initial review of a conditional zoning petition, the Planning Board shall consider whether or not a community informational meeting, to be organized and conducted by the petitioner, would be beneficial to making project information available to those most likely to be impacted by the proposed zoning change. If the Planning Board concludes that a community informational meeting should be held, the petitioner shall conduct such meeting in accordance with the following provisions:

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- (1) The community informational meeting shall be held prior to the date of the next Planning Board meeting at which the petition will be reviewed.
- (2) Written notice of such a meeting shall be given to the property owners and organizations entitled to notice as determined by policies established by the Town.
- (3) The petitioner shall file a written report of the community informational meeting with the Land Use Administrator. The petitioner's 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 names, mailing addresses, and telephone numbers 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.
- (4) The purpose of the community informational meeting is to (i) provide specific information regarding the proposed development including but not limited to a description of the proposed use(s) of the property, the proposed density and intensity of land uses, the location and arrangement of the proposed land use(s) on the property, the proposed development schedule, and proposed regulations or conditions, in addition to those required by this Ordinance, that will govern the development and use of the property and (ii) to receive comments and input from citizens likely to be impacted by the proposed zoning change and subsequent development of the property.
- (5) In the event the petitioner has not held at least one meeting pursuant to this subsection, the petitioner shall file a report with the Land Use Administrator documenting efforts that were made to arrange such a meeting and stating the reasons such a meeting was not held.

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

(f) **Review and Approval Process.** The review and approval of a petition for a conditional zoning district shall follow the same process as outlined in Sections 321 through 325 for a general use rezoning.

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(1) In the course of evaluating the proposed use, the Town Board may request additional information deemed appropriate to provide a complete analysis of the proposal.

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

(3) Conditional zoning district decisions shall be made in consideration of identified relevant adopted land use plans for the area, including, but not limited to, land development plans, comprehensive plans, strategic plans, district plans, small area plans, corridor plans, and other land development policy documents.

(g) **Conditions to Approval.** Specific conditions applicable to the conditional zoning districts may be proposed by the petitioner or the Town or its agencies, but only those conditions mutually approved by the Town and the petitioner may be incorporated into the zoning regulations or permit requirements.

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(1) Conditions and site-specific standards imposed in a conditional zoning district shall be limited to those that address the conformance of the development and use of the site to Town ordinances and an officially adopted comprehensive or other plan and those that address the impacts reasonably expected to be generated by the development or use of the site.

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(2) 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, stormwater drainage, the provision of open space, and other matters that the Town Board may find appropriate or the petitioner may propose. Such conditions to approval of the petition may include dedication to the Town 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.

(3) The petitioner shall have a reasonable opportunity to consider and respond to any such conditions prior to final action by the Town Board.

(4) If for any reason any condition for approval is found to be illegal or invalid or if the petitioner should fail to accept any condition following approval, the approval of the site plan for the district shall be null and void and of no effect and proceedings shall be instituted by the Town to rezone the property to its previous zoning classification or to another zoning district.

(h) **Effect of Approval.** 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 this Ordinance and to the zoning map.

(1) If a petition is approved, 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 subsection I, 1 below provided that such change in building layout does not result in an increase in the number of structures.

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(2) Following the approval of the petition for a conditional zoning district, the subject property shall be identified on the zoning map by the appropriate district designation. A conditional zoning district shall be identified by the same designation as the underlying general district followed by the letters 'CD' [for example 'R-15 (CD)'].

(3) No permit shall be issued for any development activity within a conditional zoning district except in accordance with the approved petition and site plan for the district

(4) Any violation of the approved site plan or any rules, regulations and conditions for the district shall be treated the same as any other violation of this Ordinance and shall be subject to the same remedies and penalties as any such violation.

(i) **Alterations to Approval.** Except as provided in subsection (1), below, changes to an approved petition or to the conditions attached to the approved petition shall be treated the same as amendments to this Ordinance or to the zoning map and shall be processed in accordance with the procedures in this Ordinance.

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(1) The Land Use Administrator shall have the delegated authority to approve an administrative amendment to an approved site plan. The Land Use Administrator shall have no authority to amend the conditions of approval of a petition. The standard for approving or denying such a requested change shall be that the change does not significantly alter the site plan and that the change does not have a significant impact upon abutting properties. Any decision by the

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Land Use Administrator must be in writing stating the grounds for approval or denial.

- (2) The Land Use Administrator, however, shall always have the discretion to decline to exercise the delegated authority either because he is uncertain about approval of the change pursuant to the standard or because a rezoning petition for a public hearing and Town Board consideration is deemed appropriate under the circumstances. If the Land Use Administrator declines to exercise this authority, the applicant may file a rezoning petition for a public hearing and Town Board decision in accordance with the provisions delineated in Sections 321 through 325.
- (3) Any request for an administrative amendment shall be pursuant to a written letter, signed by the owners of all of the property affected by the proposed change, detailing the requested change. Upon request, the applicant shall provide any additional information as deemed necessary by the Land Use Administrator. Upon an approval of an administrative amendment, the applicant shall file a sufficient number of copies of the revised site plan as deemed necessary by the Land Use Administrator.
- (4) If the Land Use Administrator denies approval of the requested administrative amendment, the applicant may file a rezoning petition for a public hearing and Town Board decision in accordance with the provisions delineated in Sections 321 through 325.

(i) **Review of Approved Conditional Zoning Districts.** 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 one year (or two years if a vested right has been established in accordance with the provisions of Section 69, Zoning Vested Rights) after the date of approval of the petition, the Planning Board may examine the progress made toward developing the property in accordance with the approved petition and any conditions attached to the approval.

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- (1) If the Planning Board determines that substantial progress has not been made in accordance with the approved petition and conditions, the Planning Board shall forward to the Town Board a report which may recommend that the property be rezoned to its previous zoning classification or to another zoning district. If the Town Board concurs with the Planning Board's recommendation, the Town Board may initiate the rezoning of the property in accordance with the procedures delineated in Sections 321 through 325.
- (2) If the Planning Board determines that substantial progress has been made to develop the property, the Planning Board may recommend that an extension of time be granted. The Town Board, after

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reviewing the recommendation of the Planning Board, may approve an extension of time not to exceed an additional 12 months. Approval of such a time extension by the Town Board may be made without conducting a formal public hearing.

- (3) If, after the expiration of the extended time period, the Planning Board determines that no substantial progress has been made and the Town Board concurs with that determination, the Town Board shall proceed to (i) conduct a public hearing on the matter to evaluate whether or not another extension of time is warranted or (ii) initiate the rezoning of the property to its previous zoning classification or to another zoning classification using the procedures delineated in Sections 321 through 325..
- (4) For purposes of this Section, examples of substantial progress may include (i) the approval of construction plans for streets, utilities, and other infrastructure; (ii) the initiation of land preparation activities such as clearing and grading; (iii) the initiation of the construction of the principal building(s); and (iv) the initiation of the construction of streets, utilities, other infrastructure, or required site amenities.