

ARTICLE 4. CHANGES AND AMENDMENTS

Section 4-1. Changes and Amendments

The Board of Commissioners may, on its own motion, or upon recommendation of the Planning Board, or upon application by any person, amend, supplement, change, modify or repeal the regulations or district boundaries established by this Ordinance. An application by an interested person may be submitted to the Board of Commissioners through and reviewed by the Planning Board, which may consider its merit and make a recommendation to the Board of Commissioners. In no case shall final action by the Board of Commissioners be taken on amending, changing, supplementing, modifying or repealing the regulations or district boundaries hereby established until a public hearing has been held by the Board of Commissioners, or on its behalf by the Planning & Zoning Board, at which parties in interest and citizens shall have an opportunity to be heard.

Section 4-2. Action by the Applicant

- (A) Initiation of Amendments.
- (1) Proposed changes or amendments to the Zoning map may be initiated by the Board of Commissioners, Planning Board, Town Administration, Board of Adjustment, or by the owner, or his agent, or interested party, of property within the area proposed to be changed.
 - (2) Proposed amendments to the text of the Ordinance may be initiated by any interested party.
- (B) Application. An application for any change or amendment shall contain a description and/or statement of the present and proposed zoning regulation or district boundary, and the names and addresses of the owner or owners of the property involved. Such application shall be filed not later than two weeks prior to the meeting of the Planning Board at which the application is to be considered.
- (C) Fee. A nonrefundable fee, according to the schedule approved by the Board of Commissioners, shall be paid to the Town for each application for an amendment to cover the costs of advertising and other administrative expenses involved.
- (D) Public Hearing Notices.
- (1) Whenever there is a zoning map amendment, the owner of that parcel of land as shown on the county tax listing, and the owners of all parcels of land abutting that parcel of land as shown on the county tax listing, shall be mailed a notice of a public hearing on the proposed amendment by first class mail at the last addresses listed for such owners on the county tax abstracts. This notice must be deposited in the mail at least 10 but not more than 25 days prior to the date of the public hearing. The person or persons mailing such notices shall certify to the Board of Commissioners that fact, and such certificate shall be deemed conclusive in the absence of fraud.
 - (2) The first class mail notice required under subsection (D)(1) of this section 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 Town elects to use the expanded published notice provided for in this subsection. In this instance, the Town of Calabash may elect to either make the mailed notice provided for in subsection (D)(1) of this section or may as an alternative elect to publish once a week for four successive calendar weeks in a newspaper having general circulation in the area an advertisement of the public hearing that shows the boundaries of the area affected by the proposed zoning map amendment and explains the nature of the proposed change. The final two advertisements shall comply with and be deemed to satisfy the provisions of NC General Statutes 160A-364. The 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 addresses listed on the most recent property tax listing for the affected property, shall be notified by first class mail pursuant to this section. The person or persons mailing the notices shall certify to the Board of Commissioners that fact, and the certificates shall be deemed conclusive in the absence of fraud. In addition to the published notice, the Town shall post one or more prominent signs on or immediately adjacent to the subject area reasonably calculated to give public notice of the proposed rezoning.

- (3) As required by NC General Statutes 160A-384(c), when a zoning map amendment is proposed, the Town of Calabash 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 Town shall post sufficient notices to provide reasonable notice to interested persons.

- (E) Reapplication for Amendment. With the exception of requests originating with the Planning Board, Board of Adjustment, or Town Administration, an application for any rezoning of the same property or any application for the same amendment to the Zoning Code text shall be permitted only once within any one year period. The Board of Commissioners, by 75% affirmative vote of its total membership present, may waive this restriction if it finds an emergency exists.

Section 4-3. Application for Zoning Amendments

No proposed zoning amendment shall be considered by the Board of Commissioners nor a public hearing held until an application containing the following information is submitted by the applicant: a statement of the present zoning regulations or district boundary, the name and signature of the applicant, and if an amendment to the zoning map is proposed, the tax parcel number of the lot proposed to be rezoned, the names and addresses of the owners of the lot in question, and the use of each adjacent property. The applicant shall provide any additional information related to the proposed amendment requested in writing by the Administrator, Planning Board, or Board of Commissioners.

Section 4-4. Action by the Planning Board

- (A) Every proposed amendment, supplement, change, modification, or repeal of this Ordinance may be referred to the Planning Board for its recommendation and report. The Planning Board may hold a public hearing, at which the Board of Commissioners may sit

concurrently with the Planning Board if the Board of Commissioners so wishes. Notice of the public hearing shall be published in a newspaper of general circulation in the Town at least once a week for two successive weeks prior to the hearing according to state regulations and by mailing notices to adjoining property owners. Notice may also be made by posting the property concerned. The Board of Commissioners shall receive from the Planning Board written notice of the hearing and its subject matter.

- (B) The following policy guidelines shall be followed by the Planning Board concerning zoning amendments and no proposed zoning amendment will receive favorable recommendation unless:
 - (1) The proposal will place all property similarly situated in the area in the same category, or in appropriate complementary categories.
 - (2) There is convincing demonstration that all uses permitted under the proposed district classification would be in the general public interest and not merely in the interest of an individual or small group.
 - (3) There is convincing demonstration that all uses permitted under the proposed district classification would be appropriate in the area included in the proposed change.
 - (4) There is convincing demonstration that the character of the neighborhood will not be materially and adversely affected by any use permitted in the proposed change.
 - (5) The proposed change is in accord with any Town plans and sound planning principles.
- (C) A petition to amend the district boundaries or regulations established by this Ordinance may be referred to the Planning Board for its next regular monthly meeting or any called special meeting, provided it has been filed, complete in form and content, at least two weeks prior to such meeting. Otherwise, referral may be deferred until the following monthly meeting.
- (D) If a public hearing is to be called, it shall be called for the next regularly scheduled meeting or any called special meeting, allowing time for proper advertisement.
- (E) The Planning Board shall render its decision on any properly filed petition within 60 days after the introduction of such petition and shall transmit its recommendation and report, including the reasons for its determinations, to the Board of Commissioners.

Section 4-5. Action by the Board of Commissioners

Before taking such lawful action as it may deem advisable, the Board of Commissioners shall consider the Planning Board's recommendation on each proposed zoning amendment. If no recommendation is received from the Planning Board within 60 days, the proposed amendment shall be deemed to have been approved by the Planning Board. The Board of Commissioners may then call its own public hearing, if it so desires, before making a decision or it may immediately render its decision. The applicant, the Planning Board, and the Administrator shall be given written copies of the Board's decision and the reasons therefor.

Section 4-6. Qualified Protests

- (A) Zoning ordinances may from time to time be amended, supplemented, changed, modified, or repealed. In case, however, of a qualified protest against a zoning map amendment, that amendment shall not become effective except by favorable vote of three-fourths of all the members of the Board of Commissioners. For the purposes of this subsection, vacant positions on the Board and members who are excused from voting shall not be considered “members of the Board” for calculation of the requisite supermajority.
- (B) To qualify as a protest under this section, the petition must be signed by the owners of either (i) twenty percent or more of the area included in the proposed change or (ii) five percent of a 100-foot wide buffer extending along the entire boundary of each discrete and 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.
- (C) The foregoing provisions concerning protests shall not be applicable to any amendment which initially zones property added to the territorial coverage of the Ordinance as a result of annexation or otherwise, or to an amendment to an adopted (i) conditional-use district, or (ii) conditional district if the amendment does not change the types of uses that are permitted within the district or increase the approved density for residential development, or increase the total approved size of nonresidential development, or reduce the size of buffers or screening approved for the conditional-use district or conditional district.
- (D) No protest against any change in or amendment to a zoning ordinance or zoning map shall be valid or effective for the purposes of NC General Statutes 160A-385 unless it be in the form of a written petition actually bearing the signatures of the requisite number of property owners and stating that the signers do protest the proposed change or amendment, and unless it shall have been received by the Town Clerk in sufficient time to allow the Town at least two normal work days, excluding Saturdays, Sundays, and legal holidays, before the date established for a public hearing on the proposed change or amendment to determine the sufficiency and accuracy of the petition. The Board of Commissioners may by ordinance require that all protest petitions be on a form prescribed and furnished by the Town, and such form may prescribe any reasonable information deemed necessary to permit the Town to determine the sufficiency and accuracy of the petition. A person who has signed a protest petition may withdraw his or her name from the petition at any time prior to the vote on the proposed zoning amendment. Only those protest petitions that meet the qualifying standards set forth in NC General Statutes 160A-385 at the time of the vote on the zoning amendment shall trigger the supermajority voting requirement.

Section 4-7. Withdrawal of the Application

Any application submitted in accordance with the provisions of Article 4 for the purpose of amending the regulations or district boundaries established by this Ordinance may be withdrawn no less than ten days prior to the public hearing, but fees are nonrefundable.