

RESOLUTION OF PLANNING BOARD RECOMMENDING THAT THE BUNCOMBE COUNTY BOARD OF
COMMISSIONERS AMEND THE TEXT OF CHAPTER 78 OF THE BUNCOMBE COUNTY CODE OF
ORDINANCES, ARTICLE VI, THE ZONING ORDINANCE OF BUNCOMBE COUNTY, and STATEMENT OF
CONSISTENCY

- WHEREAS, on December 1, 2009, the Buncombe County Commissioners enacted Buncombe County Ordinance No. 09-12-01 which established a comprehensive zoning plan for the properties located in Buncombe County outside of the boundaries of incorporated municipalities and their zoning jurisdictions;
- WHEREAS, the provisions set forth in Division 8 (Amendments) of Article VI of the Buncombe County Code of Ordinances were met prior to the public hearing at which this recommendation was considered;
- WHEREAS, pursuant N.C. Gen. Stat. §153A-344 and §78-719 of the Buncombe County Code of Ordinances, the Planning Board is charged with making a recommendation to the Board of Commissioners and to comment on whether the proposed amendments are consistent or inconsistent with the Comprehensive Land Use plan;
- WHEREAS, the Buncombe County Planning Board reviewed the proposed amendments to the text of The Zoning Ordinance of Buncombe County, North Carolina at a public hearing held by the Buncombe County Planning Board on February 15, 2016, to modify the ordinance in order to provide clarification on Board procedures, bring consistency to certain provisions based on recent changes to the North Carolina General Statutes, and uphold protections for citizens of the County;
- WHEREAS, the Zoning Administrator certified that notices of the meeting of the Buncombe County Planning Board at which these amendments were considered have been properly mailed to members of the Planning Board at least ten (10) days prior to the meeting and public notice of the meeting has been properly published in a newspaper having general circulation in the County as required; and
- WHEREAS, the Planning Board has reviewed the proposed amendments, has heard public comment, and consulted with planning staff, and, after careful review, has determined that it is in order to approve the proposed amendments and make recommendation to the Board of Commissioners for Buncombe County that the proposed amendments be approved.

NOW THEREFORE, BE IT RESOLVED, Based on the facts as set forth above the Buncombe County Planning Board hereby finds and concludes as follows pertaining to the proposed amendments to the Zoning Ordinance of Buncombe County:

1. The proposed amendments to modify the ordinance in order to provide clarification on Board procedures and bring consistency to certain provisions based on recent changes to the North Carolina General Statutes are consistent with the Buncombe County Comprehensive Land Use Plan and updates, as:

The 2013 update (Section II. Plan Framework) recommends that the County “adjust land use policies to account for changes within the regulatory environment; streamline existing regulations and policies in a manner that accounts for lessons learned since the last update; clarify existing ambiguities in land use policies and regulations; and expand existing land use policies and regulations to adjust for changes in land use patterns and demands”.

The proposed modifications which: simplify the determination of a quorum for the Board of Adjustments; clarifies the ability of any resident -regardless of proximity to an area- to initiate a proposed change or amendment; and requires that zoning map amendments initiated by a resident are certified that the actual owner of an impacted parcel is notified of the proposal and receives public hearing notice furthers these goals, and

2. The proposed amendments to the text are reasonable and in the public interest as they would provide clarification on Board procedures, bring consistency to certain provisions based on recent changes to the North Carolina General Statutes while also providing further clarity within the regulatory framework.

3. This Planning Board hereby recommends that the Board of Commissioners amend Chapter 78 of the Buncombe County Code of Ordinances as follows:

Sec. 78-620. Meetings.

(a) *Monthly; special; notice of meetings; according to state law.* The board of adjustment shall hold regular monthly meetings at a specified time and place. Special meetings of the board of adjustment may be called at any time by the chairperson or by request of three or more members of the board of adjustment. At least 48 hours' written notice of the time and place of meeting shall be given, by the chairperson, to each member of the board of adjustment. All board of adjustment meetings are to be held in accordance with G.S. 143-318.9 et seq., commonly referred to as the Open Meeting Law.

(b) *Cancellation of meetings.* Whenever there are no appeals, applications for conditional uses or variances, or other business for the board of adjustment, or whenever so many regular and alternate members notify the zoning administrator of their inability to attend that a quorum will not be available, the chairperson may dispense with a meeting by giving written or oral notice to all members.

(c) *Quorum.* A quorum shall consist of four members of the board of adjustment, but the board of adjustment shall not pass upon any questions relating to an appeal from a decision, order, requirement, or determination of the zoning administrator, or an application for a variance or conditional use permit when there are less than six members present.

DIVISION 8. AMENDMENTS

Sec. 78-716. Board of commissioners to amend article.

This article, including the zoning map, may be amended by action of the Buncombe County Board of Commissioners in accordance with the provisions of this division.

Sec. 78-717. Initiation of amendments.

Proposed changes or amendments to this article may be initiated by the Buncombe County Board of Commissioners, Buncombe County Planning Board, board of adjustment, zoning administrator or other applicant one or more owners of property within the area proposed to be changed. The board of commissioners, the planning board, board of adjustment, and the zoning administrator shall not be required to make application to the zoning administrator in order to initiate a change or amendment to this article. All proposed amendments to this Article or zoning map shall be submitted to the planning board for review and comment; however, neither the planning board nor the board of commissioners will consider a proposed change or amendment initiated by one or more property owners that was denied within the preceding 12 months by the board of commissioners.

Sec. 78-718. Application and Planning Board Notice and Hearing.

(a) Before any action on a proposed change or amendment initiated by one or more property owners within the area proposed to be changed, an application shall be submitted to the office of the zoning administrator at least 30 days prior to the planning board's meeting at which the application is to be considered. The application shall contain the name(s) and address(es) of the owner (s) of the property in question, the location of the property, and a description and/or statement of the present and proposed zoning regulation or district. All applications requesting a change in the zoning map shall include a description of the property in question.

(b) Before taking any action to recommend a change or amend this Article, the planning board shall hold a public hearing on the proposed change or amendment. The county shall cause notice of the hearing to be published once 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.

(c) 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. Except for a county-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 planning board that the owner of the parcel of land as shown on the county tax listing has received actual notice of the proposed amendment and a copy of the notice of public hearing. The person or persons mailing such notices shall certify to the planning board that fact, and such certificate shall be deemed conclusive in the absence of fraud.

(d) The first class mail notice required under the preceding paragraph 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 county elects to use the expanded published notice provided for in this subsection. In this instance, the county may elect to either make the mailed notice provided for in the preceding paragraph or may as an alternative elect to publish notice of the hearing as required by 78-718(b), but provided that such 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 property tax listing for the affected property, shall be notified according to the provisions of Sec. 78-718(c) above.

(e) When a zoning map amendment is proposed, the county 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 county shall post sufficient notices to provide reasonable notice to interested persons.

Sec. 78-719. Purposes in view.

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 board of county commissioners 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 board of commissioners.

If no written report is received from the planning board within 30 days of referral of the amendment to that board, the board of county commissioners may proceed in its consideration of the amendment without the planning board report at a public hearing as provided below. The board of commissioners is not bound by the recommendations, if any, of the planning board.

Prior to adopting or rejecting any zoning amendment, the board of commissioners shall adopt a statement describing whether its action is consistent with an adopted comprehensive plan and explaining why the board of commissioners considers the action taken to be reasonable and in the public interest. That statement is not subject to judicial review.

Sec. 78-720. Public hearing before the board of commissioners.

(a) Before taking any action to adopt, amend, or repeal any part or portion of this Article, the board of commissioners shall hold a public hearing on the proposed adoption, amendment or repeal of any part or portion of this Article. The board of commissioners shall cause notice of the hearing to be published once a week for two successive calendar weeks. 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. Further, before taking any action on a proposed adoption, amendment, or repeal of this Article, the board of commissioners shall consider the planning board's recommendations, if any, on each such proposed action.

(b) 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. Except for a county-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 county tax listing has received actual notice of the proposed amendment and a copy of the notice of 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.

(c) The first class mail notice required under the preceding paragraph 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 county elects to use the expanded published notice provided for in this subsection. In this instance, the county may elect to either make the mailed notice provided for in the preceding paragraph of this section or may as an alternative elect to publish notice of the hearing required by Sec. 78-720(a), but 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 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 property tax listing for the affected property, shall be notified according to the provisions of Sec. 78-720(b) above.

(d) When a zoning map amendment is proposed, the county 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 county shall post sufficient notices to provide reasonable notice to interested persons.

4. This resolution is approved by a vote of 9 to 0 and shall be effective upon its adoption.

This the 15th day of February 15, 2016.

BUNCOMBE COUNTY PLANNING BOARD

By: Gene Bell

Chair

Consented to:

Planning Board Members:

Nancy Waldrop

David Rittenberg

Thad B. Lewis

Dusty Pless

Joan M. Walker

Robert J. Martin

Gene Bell

Parker Sloan

Bob Taylor

Debbie Truempy
Debbie Truempy, Zoning Administrator

Approved as to form:

Michael Frue
Michael Frue, Senior Staff Attorney