

ARTICLE 5

Amendments to Development Ordinance and Zoning Map

[Amended Oct. 19, 2015 per Ord. 2015-O-21, ZTA-2015-03]

[Amended Nov. 21, 2017 per Ord. 2017-O-18, ZTA-2017-03]

[Amended July 17, 2018 per Ord. 2018-O-07, ZTA-2018-03]

[Amended Dec. 1, 2020 per Ord. 2020-O-22, ZTA-2020-03]

5.1 General

Zoning regulations shall be made in accordance with the City's comprehensive plan. The Creedmoor Board of Commissioners may amend, supplement, modify, or repeal any provision of this ordinance or amend the Official Zoning Map according to the procedure established by G.S. 160D-601. Such amendments shall be evaluated for compliance with the City's comprehensive plan. Amendments and modifications shall be acted upon by the City Board of Commissioners, after written recommendation and plan consistency statement from the Planning Board.

5.2 Initiation of Amendments

Proposed changes or amendments to the text of this chapter or to the Official Zoning Map may be initiated by the Creedmoor Board of Commissioners, the Creedmoor Planning Board, the Creedmoor Board of Adjustment, the Planning, Zoning and Subdivision Administrator, any owner of a legal or equitable interest in land located in the City or its extraterritorial jurisdiction, or any resident of the City or its extraterritorial jurisdiction, per G.S. 160D-601 and G.S. 160D-603.

5.3 Amendment Process

5.3-1 APPLICABILITY

This amendment process applies to all amendments to the Creedmoor Development Ordinance or the Official Zoning Map, except that different requirements may be imposed on the amendment process for conditional district zonings as set forth in section 5.4

5.3-2 INITIAL APPLICATION PROCESS.

- A. PRE-FILING MEETING. Before filing a petition for a zoning text amendment or a zoning map amendment, an applicant shall meet with the Planning, Zoning and Subdivision Administrator to discuss the proposed amendment and to become more familiar with the applicable requirements and approval procedures.
- B. NEIGHBORHOOD MEETING. Before filing a petition for a zoning map amendment other than single family residential zoning, an applicant shall meet with representatives of the neighborhood in which the property proposed to be rezoned is located, per G.S. 160D-602(e). This meeting shall be held at the pre-application stage to allow the applicant to explain the proposed map amendment (rezoning) to surrounding residents and property owners and to be informed of the concerns of the neighborhood. The meeting will help the applicant address major concerns of the neighborhood prior to the public notification process described in section 5.3-4(B). The Planning, Zoning and Subdivision Administrator should be notified of the time, date, and place of the neighborhood meeting at least five days prior to the meeting.
- C. FILING.
 1. A petition requesting a zoning text or zoning map amendment shall be filed with the Planning Department on a form provided by the Planning, Zoning and Subdivision Administrator.
 2. Applicable fees shall be paid as set forth by the Creedmoor Board of Commissioners, upon application submission.
- D. CONTENT OF APPLICATIONS.
 1. Each application shall contain or be accompanied by all information required on the application form provided by the Planning, Zoning and Subdivision Administrator.
 2. Every amendment proposing to change the district boundary lines shall be accompanied by a metes and bounds description, a survey of the area involved, or reference to existing lots, sufficient in the estimation of the Planning, Zoning and Subdivision Administrator to plot or

otherwise identify the amendment on the Official Zoning Map of the City of Creedmoor.

3. Any person designated by the owner(s) of the property included in the petition to serve as agent for the owner shall submit such authorization in writing with the application.

E. DOWN-ZONING.

1. No amendment to zoning regulations or a zoning map that down-zones property shall be initiated nor is it enforceable without the written consent of all property owners whose property is the subject of the down-zoning amendment, unless the down-zoning amendment is initiated by the City of Creedmoor. For the purposes of this section, "down-zoning" means a zoning ordinance that affects an area of land in one of the following ways: By decreasing the development density of the land to be less dense than was allowed under its previous usage; By reducing the permitted uses of the land that are specified in the Creedmoor Development Ordinance to fewer uses than were allowed under its previous usage, per G.S. 160D-601(d).

5.3-3 REVIEW BY THE CREEDMOOR PLANNING BOARD. *[Revised August 27, 2013 per 2013-O-12]*

- A. GENERAL. Upon submission of a request for a Creedmoor Development Ordinance text amendment or an Official Zoning Map amendment, the request shall be scheduled for review by the Creedmoor Planning Board. The Creedmoor Planning Board shall hold a public meeting to consider the requested amendment(s).
- B. REVIEW. The public meeting shall be conducted in accordance with the rules of procedure of the Creedmoor Planning Board. The Board shall make recommendations to the Creedmoor Board of Commissioners regarding whether to approve or deny each proposed amendment. When considering an amendment, the Planning Board shall consider the consistency of the amendment with the City's Land Use Plan, Comprehensive Master Plan and any other adopted plans for the area affected by the proposed amendment.
- C. NO ACTION BY THE CREEDMOOR PLANNING BOARD. If the Creedmoor Planning Board has made neither a positive nor a negative recommendation on a proposed amendment within 30 days of first considering it, the proposed amendment shall be forwarded to the Board of Commissioners for consideration. The proposed amendment shall be accompanied by a record of the Creedmoor Planning Board's comments regarding the amendment and the reasons, if any, for their lack of action. The Creedmoor Board of Commissioners may act on the amendment without the Planning Board report and recommendation. The Board of Commissioners is not bound by the recommendations, if any, of the Planning Board, per G.S. 160D-604(b).
- D. CONTENT OF RECOMMENDATION AND STATEMENT OF CONSISTENCY. Prior to consideration by the Board of Commissioners of any proposed zoning amendment, the Planning Board must advise and comment on whether the proposed amendment is consistent with any comprehensive plan adopted by the City and any other official plan adopted according to G.S. 160D-501 that is applicable, per G.S. 160D-604. The Planning Board shall provide a written recommendation to the Board of Commissioners that addresses plan consistency and other matters as deemed appropriate by the Planning Board. A comment by the Planning Board that a proposed amendment is inconsistent with the City's comprehensive plan shall not preclude consideration or approval of the proposed amendment by the Board of Commissioners. If a zoning map amendment qualifies as a "large-scale rezoning" under G.S. 160D-602(b), the Planning Board statement describing plan consistency may address the overall rezoning and describe how the analysis and policies in the relevant adopted plans were considered in the recommendation made, per G.S. 160D-604(d).
- E. CONFLICT OF INTEREST. No member of the Planning Board shall vote on a recommendation regarding any zoning map or zoning 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. A Planning Board member shall not vote on any zoning amendment if the landowner of the property subject to a rezoning petition or the applicant for a zoning text amendment is a person with whom the member has a close familial, business, or other associational relationship, per G.S. 160D-109(b).

5.3-4 REVIEW BY THE CREEDMOOR BOARD OF COMMISSIONERS.

- A. REVIEW. Following receipt of a recommendation on a proposed zoning amendment, or in the case of no action by the Creedmoor Planning Board as described in section 5.3-3(C) above, the Creedmoor Board of Commissioners shall hold a legislative hearing on the proposed zoning amendment. The public hearing will be scheduled and conducted as provided by the City Board of Commissioners rules of procedure.
- B. NOTIFICATION. The Planning, Zoning and Subdivision Administrator and City Clerk shall prepare public notices as described below that indicate the official receipt of an application for a Creedmoor Development Ordinance text amendment or an Official Zoning Map amendment. This notice for publication shall include the following:
1. Brief description of the requested amendment and properties involved;
 2. The time, date, and place at which the request will be considered; and
 3. Contact information for staff receiving comments concerning the request.

The public hearing notice shall be published in a newspaper of general circulation in the area prior to the date on which the request is to be considered. Publication of the notice shall take place 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 scheduled 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.

If the adoption of a zoning amendment or modification of the Creedmoor Development Ordinance would result in any of the changes listed in this subsection and those changes would be located five miles or less from the perimeter boundary of a military base, the City Clerk shall provide written notice of the proposed changes by certified mail, return receipt requested, to the commander of the military base or the commander's designee not less than 10 days nor more than 25 days before the date fixed for the public hearing. If the commander of the military base provides comments or analysis regarding the compatibility of the proposed development regulation or zoning amendment with military operations at the base, the Board of Commissioners shall take the comments and analysis into consideration before making a final determination. The proposed changes requiring notice are:

1. Changes to the Official Zoning Map
2. Changes that affect permitted uses of land.
3. Changes relating to wireless telecommunication towers.

When a change is proposed for the City's Official Zoning Map, notice of the public hearing shall be sent by first-class mail to the owner of that affected parcel and the owners, at the last addresses listed on the county tax listing, of all parcels abutting that parcel of land at least 10 but not more than 25 days before the date of the hearing. For the purpose of this section, properties are "abutting" even if separated by a street, railroad, or other transportation corridor. This notice also shall be mailed to the owners of any property located within 500 feet of the property in question within the same time period. The person or persons mailing such notices shall certify to the Board of Commissioners that proper notice was given.

If the zoning map amendment is being proposed in conjunction with an expansion of municipal extraterritorial planning and development regulation jurisdiction under G.S. 160D-202, a single hearing on the zoning map amendment and the boundary amendment may be held. In this instance, the initial notice of the zoning map amendment hearing may be combined with the boundary hearing notice and the combined hearing notice mailed at least 30 days prior to the hearing.

The first-class mail notice shall not be required if the zoning map amendment proposes to change the zoning designation of more than 50 properties, owned by at least 50 different property owners, and the City of Creedmoor elects to use the expanded published notice provided for in G.S. 160D-602(b). In this instance, the City may elect to make the mailed notice provided for above or, as an alternative, elect to publish notice of the hearing as required by G.S. 160D-601, provided that each advertisement shall not be less than one-half of a newspaper page in size. The advertisement is effective only for property owners who reside in the area of general circulation of the newspaper that published 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 according to the provisions above. When a zoning map amendment is proposed, the City shall, within the same time period specified for mailed notices before the scheduled public hearing, prominently post a notice of the public hearing on the property proposed for a zoning map amendment 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 City shall post sufficient notices to provide reasonable notice to interested persons, per G.S. 160D-602(c).

C. ACTION.

1. Before acting on any proposed amendment, the Creedmoor Board of Commissioners may consider any recommendation made by the Creedmoor Planning Board, the recommendation submitted by the Planning, Zoning and Subdivision Administrator, the comments made at the public hearing, and any other relevant additional information.
2. When considering a proposed amendment, the Creedmoor Board of Commissioners shall not evaluate the petition based on any specific proposal for the use or development of the property. The petitioner shall not use any graphic materials or descriptions of the proposed development except for those that would apply to all uses permitted by the requested classification.
3. Upon reviewing all pertinent information, the Creedmoor Board of Commissioners shall:
 - a. Adopt the proposed amendment;
 - b. Reject the proposed amendment;
 - c. Continue the consideration of the request to their next regularly scheduled meeting or other agreed upon time;
 - d. Refer the proposed amendment back to the Creedmoor Planning Board for further consideration or edits; or
 - e. Modify the proposed amendment.

D. STATEMENT OF CONSISTENCY. When adopting or rejecting any zoning text or zoning map amendment, the Board of Commissioners shall approve a brief statement describing whether its action is consistent or inconsistent with an adopted comprehensive plan. If a zoning map amendment is adopted and the action was deemed inconsistent with the adopted plan, the zoning amendment shall have the effect of also amending any future land-use map in the approved plan, and no additional request or application for a plan amendment shall be required. A plan amendment and a zoning amendment may be considered concurrently. The plan consistency statement is not subject to judicial review. If a zoning map amendment qualifies as a "large-scale rezoning" under G.S. 160D-602(b), the Board of Commissioners statement describing plan consistency may address the overall rezoning and describe how the analysis and policies in the relevant adopted plans were considered in the action taken, per G.S. 160D-605(a).

E. STATEMENT OF REASONABLENESS. When adopting or rejecting any petition for a zoning map amendment, a statement analyzing the reasonableness of the proposed rezoning must be approved by the Board of Commissioners. The Board of Commissioners may adopt a statement of reasonableness for zoning text amendments. This statement of reasonableness may consider, among other factors:

1. The size, physical conditions, and other attributes of the area proposed to be rezoned;
2. The benefits and detriments to the landowners, the neighbors, and the surrounding community;
3. The relationship between the current actual and permissible development of the tract and adjoining areas and the development that would be permissible under the proposed amendment;
4. Why the action taken is in the public interest;
5. Any changed conditions warranting the amendment.

If a zoning map amendment qualifies as a "large-scale rezoning" under G.S. 160D-602(b), the Board

of Commissioners statement on reasonableness may address the overall rezoning, per G.S. 160D-605(b).

- F. RESOLUTION AND ORDINANCE REQUIRED. For every zoning text amendment or zoning map amendment or other change in development regulation approved by the Creedmoor Board of Commissioners, a formal resolution must be adopted describing the Board's statement of consistency and statement of reasonableness, and a formal Ordinance must be adopted describing and codifying the change in development regulation, per G.S. 160D-601(c).
- G. CONFLICT OF INTEREST. A Creedmoor Board of Commissioners member shall not vote on any zoning map amendment or zoning text amendment or other legislative decision regarding a development regulation where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. A Board of Commissioners member shall not vote on any zoning amendment if the landowner of the property subject to a rezoning petition or the applicant for a zoning text amendment is a person with whom the Board member has a close familial, business, or other associational relationship, per G.S. 160D-109(a).

5.3-5 CITIZEN COMMENTS.

If any resident or property owner in the City of Creedmoor and its extraterritorial jurisdiction submits a written statement regarding a proposed amendment, modification, or repeal to a zoning regulation, including a text or map amendment that has been properly initiated as provided in G.S. 160D-601, to the City Clerk at least two (2) business days prior to the proposed vote on such change, the City Clerk shall deliver such written statement to the Creedmoor Board of Commissioners. If the proposed change is the subject of a quasi-judicial proceeding under G.S. 160D-705 or any other statute, the City Clerk shall provide only the names and addresses of the individuals providing written comment, and the provision of such names and addresses to all members of the Board shall not disqualify any member of the Board from voting, per G.S. 160D-603.

5.3-6 WAITING PERIOD FOR SUBSEQUENT APPLICATIONS.

- A. WAITING PERIOD-GENERAL. When an application for a zoning map amendment has been approved or denied by the Creedmoor Board of Commissioners, no rezoning application covering the same property shall be accepted or considered within 12 months after the date of the approval or denial. This restriction shall apply regardless of whether or not the new application is for a zoning classification different from the original application.
- B. WAITING PERIOD-WAIVER. The waiting period required by this section may be waived by a three-fourths vote of Creedmoor Board of Commissioners if it determines that there have been substantial changes in conditions or circumstances which may relate to the request. A request for a waiver of the waiting period shall be submitted to the Planning, Zoning and Subdivision Administrator, who shall review and prepare a recommendation regarding action on the request.

Said recommendation shall be considered by the Board of Commissioners in their review of the request for a waiver. If the request for the waiver is approved, the application shall go through the full review process as set forth above.

5.4 Conditional District Zoning

5.4-1 GENERAL

- A. Like general district zoning map amendments (rezonings), conditional district rezoning is a legislative process. Unlike general district rezonings, a conditional zoning district may be approved with conditions and a site specific development plan imposed on properties within the district. This process is designed to address unique development scenarios when a development proposal does not fit into a conventional zoning district, but with proper conditions and a controlling site plan may be desirable and compatible with the surrounding area. Except as otherwise provided in this section, the conditional district rezoning process shall follow the procedures outlined in section 5.3, "Amendment Process."

- B. Property may be rezoned and placed in a conditional district only in response to a petition submitted by all owners of the property to be included in the district.

5.4-2 PLANS AND OTHER INFORMATION TO ACCOMPANY PETITION.

- A. In addition to meeting the requirements of subsection 5.3-2(D), a petition for conditional district zoning must include the following:
 - 1. A site plan for all properties to be included in the conditional district.
 - 2. A list of all conditions proposed by the applicant.
- B. The Board of Commissioners may 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 Planning, Zoning and Subdivision Administrator as to whether more information than that set forth in subsection 5.3-2(D) should be submitted.
- C. In the course of evaluating the proposed use for the conditional zoning district, the Planning, Zoning and Subdivision Administrator, Planning Board, or the Board of Commissioners may request additional information from the applicant. This information may include, but is not limited to, the following:
 - 1. Proposed number, size, shape, and general location of all structures;
 - 2. Proposed screening, buffers and landscaping, 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 proposed buildings relative to abutting property;
 - 5. Height of proposed structures;
 - 6. Elevation renderings of exterior features of proposed development;
 - 7. Proposed number and location of signs; and
 - 8. Any other information needed to mitigate negative impacts and demonstrate compliance with this Ordinance.
- D. The included proposed site plan and any supporting text shall constitute part of the petition for all purposes under this part.

5.4-3 CONDITIONS ON APPROVAL OF PETITION

- A. In approving a petition for a conditional zoning district, the Board of Commissioners may request that reasonable and appropriate conditions be included as part of the approval. Specific conditions may be proposed by the petitioner or the City of Creedmoor or the Planning, Zoning and Subdivision Administrator, but only those conditions approved by the Creedmoor Board of Commissioners and consented to by the petitioner in writing may be incorporated into the zoning regulations.
- B. 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 City development regulations, ordinances and all relevant officially adopted City 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 that the petitioner may propose. Such conditions may include dedication to the City, 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. Unless consented to by the petitioner in writing, the City of Creedmoor may not require, enforce, or incorporate into zoning regulations any condition or requirement not authorized by otherwise applicable law, including, without limitation, taxes, impact fees, building design elements within the scope of G.S. 160D-702(b), driveway-related improvements in excess of those allowed in G.S. 136-18(29) and G.S. 160A-307, or other unauthorized limitations on the development or use of land, per G.S. 160D-703(b).
- C. Conditions in a conditional zoning district may not be used to lower or otherwise reduce the minimum standards of the Creedmoor Development Ordinance, including those standards that would apply were the property not zoned to a conditional district. Conditions may be used to authorize uses that would otherwise not be allowed, and conditions may impose higher standards than those that would apply to the property were it not zoned to a conditional district. Examples of impermissible lowering of standards include, but are not limited to, using conditions to reduce required lot size, minimum setbacks, required landscaping, or required parking.

- D. 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 agreed to by the petitioner in writing may be incorporated into the conditional district and zoning regulations.
- E. Modification of the conditions, standards or site plan in a conditional zoning district shall follow the same process for approval as are applicable to zoning map amendments. If multiple parcels of land are subject to a conditional zoning district, the owners of individual parcels may apply for modification of the conditions so long as modification would not result in other properties failing to meet the terms of the conditions for the district. Any modifications approved apply only to those properties whose owners petition for the modification. Minor modifications, as defined in Article 3 and Article 7.15 of this Ordinance, to conditional district standards, conditions and site plans that do not involve a change in uses permitted or change in the density of overall development permitted may be reviewed and approved administratively by the Planning, Zoning and Subdivision Administrator.

5.4-4 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 and mutually agreed to 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 Official Zoning Map.
- B. If a petition is approved, the petitioner shall comply with all requirements of the City of Creedmoor Code of Ordinances and sections of the Creedmoor Development Ordinance that do not conflict with the approved conditions and site plan for the district. Only those uses and structures indicated in the approved conditional zoning district petition and site plan shall be allowed on the subject property.
- C. Following the approval of the petition for a conditional zoning district, the subject property shall be identified on the Official Zoning Map by the appropriate district designation and a brief description of the approved conditional zoning district added to Article 8 (Zoning Districts) of this Ordinance.
- D. A chronological list of all conditional zoning district approvals and associated plans and conditions shall be maintained by the Creedmoor Community Development Department.