

ARTICLE VIII

AMENDMENTS AND DEVELOPMENT MORATORIA

8-1 AMENDMENTS IN GENERAL

- (A) Amendments to the text of this Ordinance or to the zoning map may be made in accordance with the provisions of this Article.
- (B) As provided in NCGS 160A-385(b), amendments, modifications, supplements, repeal or other changes in zoning regulations and restrictions and zone boundaries shall not be applicable or enforceable without consent of the owner with regard to buildings and uses for which either (i) a building permit has been issued pursuant to NCGS 160A-417 prior to the enactment of the ordinance making the change or changes as long as the permit remains valid and unexpired pursuant to NCGS 160A-418 and unrevoked pursuant to NCGS 160A-422 or (ii) a vested right has been established pursuant to NCGS 160A-385.1 and the provisions of Section 4-15 of this Ordinance and such vested right remains valid and unexpired.
- (C) The review process for an amendment to the text of this Ordinance or to the zoning map shall include:
 - (1) Planning Board review and recommendation in accordance with Section 8-3;
 - (2) Public hearing held by the Board of Commissioners;
 - (3) Board of Commissioners review and action; and
 - (4) A statement analyzing the reasonableness of the proposed zoning map change when the request is for a small-scale rezoning (i.e., spot zoning).
(Amended 01-09-07)

8-2 INITIATION OF AMENDMENTS

- (A) Any person or organization may petition the Board of Commissioners to amend this Ordinance. The petition, on a form approved by the Board of Commissioners, shall be filed with the Town Clerk and shall include, among the information deemed relevant by the Town Clerk:
 - (1) The name, address, and phone number of the applicant;
 - (2) A metes and bounds description and a scaled map of the land affected by the amendment if a change in zoning district classification is proposed; and
 - (3) A description of the proposed map change or a summary of the specific objective of any proposed change in the text of this Ordinance.
- (B) Petitions for amendments shall be submitted to the Town Clerk fifteen working days prior to the date of the Planning Board meeting at which the petition will be reviewed. *(Amended 01-09-07)*

8-3 PLANNING BOARD REVIEW AND RECOMMENDATION

- (A) Upon receipt of a petition for an amendment, the Town Clerk shall forward the request to the Planning Board for its consideration.
- (B) The Planning Board shall review the proposed amendment and submit its written recommendation to the Board of Commissioners within 60 days of the date of the initial Planning Board meeting at which the zoning amendment is considered unless the Planning Board requests and is granted an extension by the Board of Commissioners. Failure to submit a recommendation within this period, without an extension, shall be deemed a favorable recommendation. (*Amended 01-09-07*)
- (C) The Planning Board may, at its discretion, hold a separate public hearing from that held by the Board of Commissioners. Public hearings held by the Planning Board need not adhere to the hearing requirements outlined in Section 8-4 for public hearings held by the Board of Commissioners.
- (D) The Planning Board shall advise and comment on whether the proposed amendment (text or map) is consistent with any comprehensive plan or land development/use 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 Commissioners that addresses plan consistency and other matters as deemed appropriate by the Planning Board; however, a comment by the Planning Board that a proposed amendment is inconsistent with the comprehensive plan or land development/use plan shall not preclude consideration or approval of the proposed amendment by the Board of Commissioners. (*Amended 01-09-07*)

8-4 PUBLIC HEARINGS

- (A) The Town Clerk is authorized to schedule a public hearing immediately following the Planning Board meeting at which an amendment request is reviewed and a recommendation made to the Board of Commissioners.
- (B) The Town Clerk shall publish a notice of the public hearing on any ordinance that amends the provisions of this Ordinance once a week for two successive weeks in a newspaper having general circulation in the Town of White Lake. 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 public hearing. In computing this period, the date of publication shall not be counted but the date of the public hearing shall be. Notice shall also be made by posting the property involved in the amendment request, or on an adjacent public street or highway right-of-way. When multiple parcels are involved, a posting on each individual parcel is not required, but the Town shall post sufficient notices to provide reasonable notice to interested persons. The notice(s) shall be posted no less than ten (10) days prior to date of the public hearing. (*Amended 01-09-07*)
- (C) With respect to map amendments, the Town Clerk shall provide first class mail notice of the public hearing to the record owners for tax purposes of all properties whose zoning classification is changed by the proposed amendment as well as the owners of all properties abutting the property rezoned by the amendment. The mailed notice shall be deposited in the mail at least ten (10) but not more than

twenty-five (25) days prior to the date of the public hearing. (*Amended 01-09-07*)

- (D) The notice required in subsection (C) shall not be required in the following situations:
- (1) The total rezoning of all property within the corporate boundaries of White Lake unless the rezoning involves zoning of parcels of land to less intense or more restrictive uses. If the rezoning involves zoning of parcels of land to less intense or more restrictive uses, notification to owners of these parcels shall be made by mail in accordance with subsection (C) of this Section;
 - (2) The zoning is an initial zoning of the entire zoning jurisdiction area;
 - (3) The zoning reclassification action directly affects more than 50 properties, owned by a total of at least 50 different property owners;
 - (4) The reclassification is an amendment to the zoning text; or
 - (5) The Town is adopting a water supply watershed protection program as required by NCGS 143-214.5.

In any case where this subsection eliminates the mailed notice required by subsection (C), the Town shall publish once a week for two successive calendar weeks in a newspaper having general circulation in the area maps showing the boundaries of the area affected by the proposed ordinance or amendment. 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 public hearing. In computing this period, the date of publication shall not be counted but the date of the public hearing shall be. The map shall not be less than one-half of a newspaper page in size. The notice 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 the Town's jurisdiction or 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 mail pursuant to subsection (C). In addition to the published notice, the Town shall post one or more prominent signs immediately adjacent to the subject area reasonably calculated to give public notice of the proposed rezoning. The notice(s) shall be posted no less than ten (10) days prior to date of the public hearing. (*Amended 01-09-07*)

- (E) The Town may elect to take any other action deemed to be useful or appropriate to give notice of the public hearing on any proposed amendment. (*Amended 01-09-07*)
- (F) 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 Town Clerk;
 - (5) State that substantial changes in the proposed amendment may be made following the public hearing; and
 - (6) If the proposed amendment involves a change in zoning district classification, summarize the protest provisions of Section 8-7.
- (G) The person or persons mailing notices to property owners, as defined in NCGS 160A-384(a), shall certify to the Board of Commissioners that fact, and the certificate shall be deemed conclusive in the absence of fraud. (*Amended 01-09-07*)

8-5 BOARD OF COMMISSIONERS REVIEW AND ACTION

- (A) No ordinance that amends any of the provisions of this Ordinance may be adopted by the Board of Commissioners until a public hearing has been held on such Ordinance.
- (B) At the conclusion of a public hearing on the proposed amendment, the Board of Commissioners may proceed to vote on the proposed amendment, refer it to a committee for further study, or take any other action consistent with its usual rules of procedure.
- (C) The Board of Commissioners 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.
- (D) 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, land development/use plan, or other officially adopted plan, and explaining why the Board considers the action taken to be reasonable and in the public interest. The statement is not subject to judicial review. (*Amended 01-09-07*)
- (E) Voting on amendments on this Ordinance shall proceed in the same manner as other ordinances, and in accordance with Section 3-4 (Board of Commissioners) of this Ordinance. (*Amended 01-09-07*)

8-6 ULTIMATE ISSUE BEFORE BOARD OF COMMISSIONERS ON AMENDMENTS

In deciding whether to adopt a proposed amendment to this Ordinance, the central issue before the Board of Commissioners 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 Chairman and excluded. When considering proposed map amendments:

- (A) The Board of Commissioners shall not consider 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 of Commissioners 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.

- (B) The Board of Commissioners 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.

8-7 QUALIFIED PROTESTS TO ZONING DISTRICT CHANGES

- (A) A protest against a proposed zoning map amendment may be submitted by an aggrieved party. If a petition opposing a change in the zoning classification of any property is filed in accordance with the provisions of this Section, then the proposed amendment may be adopted only by a favorable vote of three-fourths of the Board membership. For the purpose of this Section, vacant positions on the Board of Commissioners and members who are excused from voting shall not be considered "members of the Board" for calculation of the requisite supermajority. In accordance with NCGS 160A-385(a), 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 any text amendment to this Ordinance. *(Amended 01-09-07)*
- (B) To invoke the three-fourths vote requirement, the petition must:
 - (1) Be signed by the owners of either (i) twenty percent of the area included in a proposed change, or (ii) five percent 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 the 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 the parcel. In the absence of evidence to the contrary, the Town may rely on the County tax listing to determine "owners" of potentially qualifying areas. *(Amended 01-09-07)*
 - (2) 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.
 - (3) Be received by the Town Clerk in sufficient time to allow the Town at least two normal working days before the date established for a public hearing on the proposed amendment to determine the sufficiency and accuracy of the petition.
 - (4) Be on a form provided by the Town Clerk and contain all the information requested on this form.

A person who has signed a protest petition may withdraw his/her name from the petition at any time prior to the vote on the proposed zoning map amendment. Only

those protest petitions that meet the qualifying standards set forth above at the time of the vote on the zoning map amendment shall trigger the supermajority voting requirements. *(Amended 01-09-07)*

8-8 NOTICE TO NORTH CAROLINA DEPARTMENT OF TRANSPORTATION OF ESTABLISHMENT OR REVISION OF INDUSTRIAL ZONES ALONG INTERSTATE OR PRIMARY HIGHWAY RIGHTS-OF-WAY

Pursuant to NCGS 136-153, all zoning authorities shall give written notice to the Department of Transportation of the establishment or revision of any industrial zone within six hundred and sixty (660) feet of interstate or primary highways. Notice shall be by registered mail sent to the offices of the Department of Transportation in Raleigh, North Carolina, within fifteen (15) days after the effective date of the zoning change or establishment. *(Amended 01-09-07)*

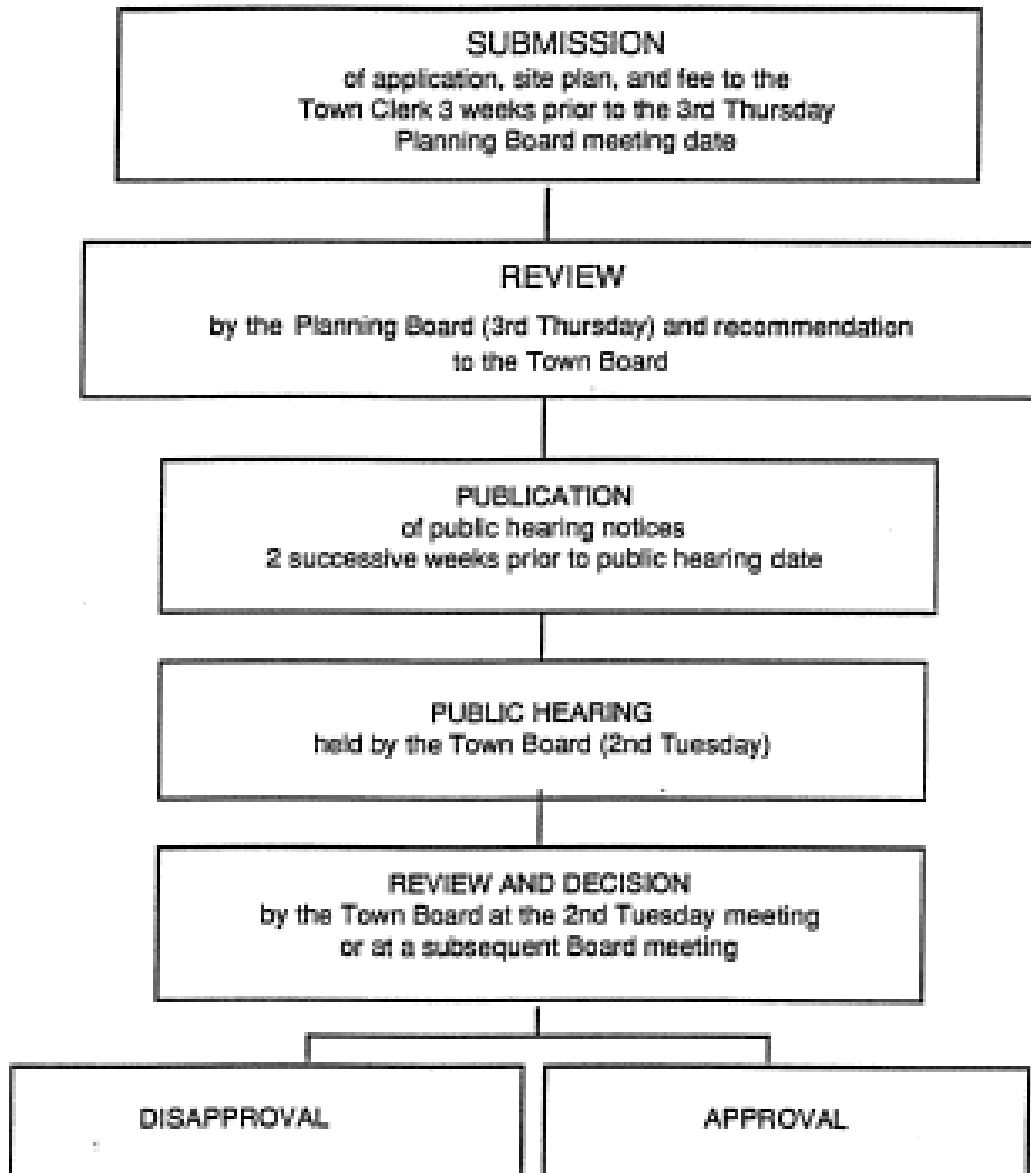
8-9 STATUTE OF LIMITATIONS ON CHALLENGES TO ORDINANCE ADOPTION AND AMENDMENTS

Pursuant to NCGS 1-54.1, an action contesting the validity of the adoption of, or any amendment to, a municipal zoning ordinance adopted under Chapter 160A of the General Statutes or other applicable law shall be taken within two months of the adoption of the ordinance or amendment. *(Amended 01-09-07)*

8-10 DEVELOPMENT MORATORIA

Pursuant to NCGS 160A-381(e), the Town may adopt a temporary moratorium on any development requiring Town approval required by law. The duration of any moratorium shall be reasonable in light of the specific conditions that warrant imposition of a moratorium and may not exceed the period of time necessary to correct, modify, or resolve such conditions. The requirements of NCGS 160A-381(e) shall be followed should the Town decide to adopt a temporary development moratorium. *(Amended 01-09-07)*

Figure 4
Process for Reviewing Requests for Rezoning and Text Amendments
Town of White Lake



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