

TA #16-01 Amend Article 11.4.5 & 11.4.7(a), Remove Protest Petitions to Comply with NCSL 2015-160**PART 1: DESCRIPTION**

Text Amendment, TA #16-01, is a request by the Town of Huntersville to amend Article 11.4.5 and 11.4.7(a) of the Huntersville Zoning Ordinance (see Attachment A, Text Amendment Application and Attachment B, Proposed Ordinance) to remove the protest petition provision and reflect the adopted language of North Carolina Session Law (NCSL) 2015-160 (Attachment C).

PART 2: BACKGROUND

Prior to the adoption of NCSL 2015-160 a protest petition could be filed against a zoning map amendment. Written protest against an amendment to the zoning classification of property, excepting amendments which initially zone property added to the territorial coverage of the ordinance, required a favorable vote of three fourths (3/4) of all members of the Town Board. Valid protest petitions required one of the following conditions:

1. If written protests are submitted by the owners of twenty percent (20%) or more of the area of the lots included in a proposed change; or
2. If written protests are submitted by the owners of 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.

NCSL 2015-160 removes the protest petition option for property owners in cities and towns. Article 11.4.5 and 11.4.7(a) of the Huntersville Zoning Ordinance must be amended to reflect the adopted changes enacted by NCSL 2015-160.

The Land Development Ordinances Advisory Board (LDOAB) reviewed the proposed amendment at their April 7, 2016 meeting and recommended approval (8-0).

PART 3: RELEVANT SECTIONS OF THE HUNTERSVILLE 2030 COMMUNITY PLAN AND APPLICABLE LONG RANGE PLANS

The following are examples of relevant plans and polices from the 2030 Huntersville Community Plan that may be incorporated into the Board's statement of consistency for approval or denial of the request.

Policy ED-14 Development and Review Process – Support efforts to improve efficiency and responsiveness of development review process for development proposals.

PART 4: STAFF RECOMMENDATION

Article 11.4.5 and 11.4.7(a) of the Huntersville Zoning Ordinance must be amended to reflect the adopted changes enacted by NCSL 2015-160. The recommendation is based on:

Consistency with policy of the Huntersville Community Plan listed above.

Amending the protest petition language in the Huntersville Zoning Ordinance to reflect the adopted language of NCSL 2015-160 will create consistency between our zoning laws and state laws.

PART 5: PUBLIC HEARING

The Public Hearing was held on June 6, 2016. No comments were received.

PART 6: PLANNING BOARD RECOMMENDATION

The Planning Board meeting was held on June 28, 2016. Planning Board voted unanimously to recommend approval of the text amendment (9-0).

PART 7: ATTACHMENTS AND ENCLOSURES

Attachment A: Text Amendment Application

Attachment B: Proposed Ordinance

Attachment C: NCSL 2015-160

PART 8: STATEMENT OF CONSISTENCY – TA #16-01

Planning Department	Planning Board	Board of Commissioners
<p>APPROVAL: In considering the proposed amendment, TA 16-01, to amend Article 11.4.5 and 11.4.7(a) of the Zoning Ordinance, the Planning staff recommends approval based on the amendment being consistent with policy ED-14 of the Town of Huntersville 2030 Community Plan.</p> <p>It is reasonable and in the public interest to amend the Zoning Ordinance because doing so creates consistency between our zoning laws and state laws.</p>	<p>APPROVAL: In considering the proposed amendment, TA 16-01, to amend Article 11.4.5 and 11.4.7(a) of the Zoning Ordinance, the Planning Board recommends approval based on the amendment being consistent with policy ED-14 of the Town of Huntersville 2030 Community Plan.</p> <p>It is reasonable and in the public interest to amend the Zoning Ordinance because doing so creates consistency between our zoning laws and state laws.</p>	<p>APPROVAL: In considering the proposed amendment, TA 16-01, to amend Article 11.4.5 and 11.4.7(a) of the Zoning Ordinance, the Town Board recommends approval based on the amendment being consistent with <u>(insert applicable plan reference)</u></p> <p>It is reasonable and in the public interest to amend the Zoning Ordinance because...(Explain)</p>
		<p>DENIAL: In considering the proposed amendment, TA 16-01, to amend Article 11.4.5 and 11.4.7(a) of the Zoning Ordinance, the Town Board recommends denial based on the amendment being <u>(consistent OR inconsistent)</u> with <u>(insert applicable plan reference)</u>.</p> <p>It is not reasonable and in the public interest to amend the Zoning Ordinance because....(Explain)</p>



Text Amendment Application

Incomplete submissions will not be accepted.

Applicant Data

Date of Application 4/1/2016

Name Caroline Sawyer, Town of Huntersville Planning Department Staff

Address 105 Gilead Rd, 3rd Floor, Huntersville, NC 28078

Phone Number (home) _____ (work) 704-875-7000

Email csawyer@huntersville.org

Fee

Text Amendment to the Zoning/Subdivision Ordinance Fee \$400.00

Type of Change

☐ New Addition to text of Zoning Ordinance / Subdivision Ordinance / Other

☒ Revision/Modification to text of Zoning Ordinance / Subdivision Ordinance / Other

Description of Change (If possible, please provide a Word document of the proposed text change)

Proposed text amendment will affect the following:

Ordinance: Zoning Article: 11 Section: 11.4.5 & 11.4.7(a)

Current Text: Refer to Attachment B - Proposed Ordinance

Proposed Text: Refer to Attachment B - Proposed Ordinance

Reason for requested change (attach additional sheets if necessary): This is a request by the Town of Huntersville to amend Article 11.4.5 and 11.4.7(a) of the Zoning Ordinance to reflect changes made by NCSL 2015-160 by removing protest petitions.

NOTE: If the proposed text amendment effects property located along Hwy 73; is 2000 feet from an adjoining municipality, and/or the Mountain Island and Lake Norman Watersheds, additional peer review is required.

Signatures

I hereby certify that the information presented by me in this application is accurate to the best of my knowledge, information and belief.

Applicant Signature: Caroline Sawyer Date: 4/1/2016

Contact Information

Town of Huntersville	Phone:	704-875-7000
Planning Department	Fax:	704-875-6546
PO Box 664	Physical Address:	105 Gilead Road, Third Floor
Huntersville, NC 28070	Website:	http://www.huntersville.org/Departments/Planning.aspx

**AN ORDINANCE TO AMEND ARTICLE 11.4.5 PROTESTED ZONING AMENDMENT AND 11.4.7(a)
RECOMMENDATION AND DECISION TO REFLECT THE CHANGES AMENDED BY
SESSION LAW 2015-160**

Section 1. Be it ordained by the Board of Commissioners of the Town of Huntersville that the **Zoning Ordinance** is hereby amended as follows:

11.4 AMENDMENT PROCESS

.5 Protested Zoning Amendment Citizen Comments

If any resident or property owner in the Town submits a written statement regarding a proposed amendment, modification, or repeal to a zoning ordinance to the Town Clerk at least two business days prior to the proposed vote on such change, the Town Clerk shall deliver such written statement to the Town Board of Commissioners. If the proposed change is the subject of a quasi-judicial proceeding under G.S. 160A-388, the Town 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.

~~a) Written protest against an amendment to the zoning classification of property, excepting amendments which initially zone property added to the territorial coverage of the ordinance, shall require a favorable vote of three-fourths (3/4) of all members of the Town Board. For purposes of this subsection, vacant positions on the Town Board and members who are excused from voting shall not be considered 'members of the Town Board' for calculation of the requisite supermajority. Valid protest shall require one of the following conditions:~~

- ~~1) If written protests are submitted by the owners of twenty percent (20%) or more of the area of the lots included in a proposed change; or~~
- ~~2) If written protests are submitted by the owners of 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.~~

~~b) To be valid and effective, protest letters shall:~~

- ~~1) Be presented in writing; and~~
- ~~2) Bear the signature and address of the protesting property owner; and~~
- ~~3) State that the signer does protest the proposed amendment; and~~
- ~~4) Be received by the Town Clerk at least two working days before the date established for a public hearing on the proposed amendment, in order to establish the sufficiency and accuracy of the petition.~~

- ~~c) Any property owner may withdraw their protest at any time prior to the Board's vote on the rezoning petition. In order to withdraw signatures, the withdrawals must be in writing, identifying the rezoning protested against, and state that the submitted signatures have the purpose of deleting signers from the protest petition. Only those protest petitions that meet the qualifying standards set forth in GS 160A-385 at the time of the vote on the rezoning petition shall trigger the supermajority voting requirement. A withdrawn protest petition may not be reinstated after the deadline for filing protests set forth in (b) (4) above.~~

.7 Recommendation and Decision

- a) The Town Board may not vote to rezone property to a conditional zoning district during the time period beginning on the date of a municipal general election and concluding on the date immediately following the date on which the Town Board holds its organizational meeting following a municipal general election unless no person spoke against the rezoning at the public hearing, ~~and no valid protest petition under G.S. 160A-386 was filed. If a valid protest petition under G.S. 160A-386 has been filed against a zoning petition which would otherwise have been scheduled for a public hearing during the period beginning on the first day of October prior to a municipal general election, but prior to the new Town Board taking office, then the public hearing on such petition and any decision on such petition shall be postponed until after the new Town Board takes office.~~

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015**

**SESSION LAW 2015-160
HOUSE BILL 201**

AN ACT TO AMEND THE PROCESS BY WHICH THE CITY COUNCILS RECEIVE
CITIZEN INPUT IN ZONING ORDINANCE AMENDMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-385(a) reads as rewritten:

"§ 160A-385. Changes.

(a) ~~Qualified Protests.~~Citizen Comments.

- (1) 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 city council. For the purposes of this subsection, vacant positions on the council and members who are excused from voting shall not be considered "members of the council" for calculation of the requisite supermajority. If any resident or property owner in the city submits a written statement regarding a proposed amendment, modification, or repeal to a zoning ordinance to the clerk to the board at least two business days prior to the proposed vote on such change, the clerk to the board shall deliver such written statement to the city council. If the proposed change is the subject of a quasi-judicial proceeding under G.S. 160A-388, the 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.~~
- (2) ~~To qualify as a protest under this section, 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 city may rely on the county tax listing to determine the "owners" of potentially qualifying areas.~~
- (3) ~~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) special use district, (ii) conditional use district, or (iii) 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 any buffers or screening approved for the special use district, conditional use district, or conditional district."~~

SECTION 2. G.S. 160A-386 is repealed.

SECTION 3. G.S. 122C-403(3) reads as rewritten:

- "(3) Regulate the development of the reservation in accordance with the powers granted in Article 19, Parts 2, 3, 3C, 5, 6, and 7, of Chapter 160A of the



General Statutes. The Secretary may not, however, grant a special use permit, a conditional use permit, or a special exception under Part 3 of that Article. In addition, the Secretary is not required to notify landowners of zoning classification actions under G.S. 160A-384, ~~and the protest petition requirements in G.S. 160A-385, and 160A-386 do not apply,~~ but the Secretary shall give the mayor of the Town of Butner at least 14 days' advance written notice of any proposed zoning change. The Secretary may designate Advisory establish a board to act like a Board of Adjustment to make recommendations to the Secretary concerning implementation of plans for the development of the reservation. When acting as a Board of Adjustment, Advisory that board shall be subject to subsections (b), (c), (d), (f), and (g) of G.S. 160A-388."

SECTION 4. This act also repeals any local act authority for submission, review, or action by any municipality upon any zoning protest petition, whether or not enacted as a provision in a municipal charter.

SECTION 5. G.S. 160A-75 reads as rewritten:

"§ 160A-75. Voting.

No member shall be excused from voting except upon matters involving the consideration of the member's own financial interest or official conduct or on matters on which the member is prohibited from voting under G.S. 14-234, 160A-381(d), or 160A-388(e)(2). In all other ~~eases, cases except votes taken under G.S. 160A-385,~~ a failure to vote by a member who is physically present in the council chamber, or who has withdrawn without being excused by a majority vote of the remaining members present, shall be recorded as an affirmative vote. The question of the compensation and allowances of members of the council is not a matter involving a member's own financial interest or official conduct.

An affirmative vote equal to a majority of all the members of the council not excused from voting on the question in issue, including the mayor's vote in case of an equal division, shall be required to adopt an ordinance, take any action having the effect of an ordinance, authorize or commit the expenditure of public funds, or make, ratify, or authorize any contract on behalf of the city. In addition, no ordinance nor any action having the effect of any ordinance may be finally adopted on the date on which it is introduced except by an affirmative vote equal to or greater than two thirds of all the actual membership of the council, excluding vacant seats and not including the mayor unless the mayor has the right to vote on all questions before the council. For purposes of this section, an ordinance shall be deemed to have been introduced on the date the subject matter is first voted on by the council."

SECTION 6. This act becomes effective August 1, 2015, and applies to zoning ordinance changes initiated on or after that date.

In the General Assembly read three times and ratified this the 16th day of July, 2015.

s/ Daniel J. Forest
President of the Senate

s/ Tim Moore
Speaker of the House of Representatives

s/ Pat McCrory
Governor

Approved 10:30 a.m. this 17th day of July, 2015