

## **ARTICLE XV. BOARD OF ZONING APPEALS**

### **Section 15.1 Establishment of Board of Zoning Appeals**

A Board of Zoning Appeals is hereby established. Said Board shall consist of seven (7) members who shall be citizens of Dorchester County and shall be appointed by the Dorchester County Council for overlapping terms of four (4) years. Any vacancy in the membership shall be filled for the unexpired term in the same manner as the initial appointment. No member of the Board shall hold any other public office or position in the County. Members shall serve without pay but may be reimbursed for expenses incurred while representing the Board. County Council may remove any member of the Board for cause.

### **Section 15.2 Proceedings of the Board of Zoning Appeals**

The Board shall adopt rules and by-laws in accordance with the provisions of this Ordinance and the South Carolina Code of Laws, 1976, §6-29-780.

#### **15.2.1 Officers**

The Board of Zoning Appeals shall elect a chairman and a vice-chairman from its members who shall serve for one (1) year or until re-elected or until their successors are elected. The Board shall appoint a secretary, who may be a County official, an employee of the County, a member of the Planning Commission or a member of the Board of Zoning Appeals. The Chair, or acting Chair, may administer oaths and may compel the attendance of witnesses by subpoena.

#### **15.2.2 Meetings**

Meetings of the Board shall be held at the call of the Chairman or in his/her absence, the Vice-Chairman or Zoning Administrator, and at such other times as a majority of the Board may determine. Due notice shall be given to all parties in interest. All meetings of the Board shall be open to the public and all evidence and testimony shall be presented publicly.

#### **15.2.3 Minutes**

The Board shall keep minutes of its proceedings, showing the vote of each member upon questions, or if absent or failing to vote, indicating such fact, and keep records of its examinations and actions, all of which must be filed in the office of the County and be a public record.

**Section 15.3 Powers and Duties of the Board of Zoning Appeals**

The Board of Zoning Appeals shall not have the power to alter, change and/or to supersede in matters involving provisions of the Standard Building Code, as adopted and the Building Contractor Licensing Ordinance of Dorchester County, as adopted, nor shall the Board have authority to alter, mitigate, change or stay any action of the Dorchester County Council or the Dorchester County Planning Commission. The Board of Zoning Appeals shall have the following powers and duties related specifically to the provisions of this Ordinance:

**15.3.1** To hear and decide appeals where it is alleged there is error in any order, requirement decision or determination by the Zoning Administrator in the enforcement of this Ordinance.

**15.3.2** To hear and decide appeals for a Variance from the terms of the Ordinance as will not be contrary to the public interest, where owing to special conditions, a literal enforcement of the provisions of the Ordinance will, in an individual case, result in unnecessary hardship, so that the spirit of the Ordinance shall be observed, public safety and welfare secured, and substantial justice done.

(a) Such Variance may be granted in an individual case of unnecessary if the Board of Zoning Appeals makes and explains in writing **all** of the following findings:

- (1) There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape or topography; and
- (2) Such conditions are peculiar to the particular piece of property involved and do not generally apply to other property in the vicinity; and
- (3) Because of these conditions, the application of the Ordinance to this particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property; and
- (4) The authorization of a variance will not cause substantial detriment to adjacent property or to the public good, or impair the purpose and intent of the Ordinance or the comprehensive plan.

(b) The Board may **NOT** grant a variance the effect of which would be:

- (1) To allow the establishment of a use not otherwise permitted in a zoning district; or
- (2) To extend physically a nonconforming use of land; or

(3) To change the zoning district boundaries shown on the official zoning map.

(c) The fact that property may be utilized more profitably should a variance be granted, may **not** be considered grounds for a variance.

**15.3.3** To permit uses by special exception, subject to the terms and conditions for such uses in Article X of this Ordinance.

## **Section 15.4 Appeals, Variances and Special Exceptions**

### **15.4.1 Appeals**

(a) An appeal may be initiated by any person or any officer, department, board or bureau of the jurisdiction aggrieved by a decision or interpretation made by the Zoning Administrator.

(b) An appeal shall be filed with the Zoning Administrator and Board of Zoning Appeals within fifteen (15) days following a receipt of a written decision from the Zoning Administrator.

(c) Appeals must be in writing, specifying the grounds for which the appeal is being made. The appeal filing shall include the name and address of the person making the appeal and will include a daytime telephone number where the appellant can be reached.

(d) The Zoning Administrator will have fifteen (15) days to investigate the matter and attempt to amend the decision. Should the application need additional consideration, the Zoning Administrator will immediately transmit the appeal and all papers constituting the record upon which the appeal is being taken to the Board of Zoning Appeals for their review and decision.

(e) An appeal stays all legal proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the Board that by reasons of fact stated in the certification that a stay would, in his opinion, cause imminent peril to life or property. In that case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board or by a court of record on application, on notice to the Zoning Administrator, and on due cause.

### **15.4.2 Variances**

(a) A variance may be requested by any property owner who feels that the strict application of zoning requirements in this Ordinance will cause them unnecessary hardship pursuant to Section 15.3.

- (b) A request for Variance can be submitted anytime. Such request shall be made in writing, and mailed or delivered to the County Zoning Administrator, accompanied by application forms provided by the Department of Planning and Codes Enforcement.
- (c) The Board shall hold one or more public hearings, at which any party may appear in person, by agent or attorney, prior to taking action on a request for a variance.
- (d) Properties addressed in a request for a variance will be posted with a minimum of one sign, provided by the Department of Planning and Codes Enforcement, of a size and location that is clearly visible from the abutting road/street, on all properties for which a Request for Variance has been received. Such sign(s) shall cite the zoning ordinance section for which the variance is requested and shall be posted by the applicant a minimum of ten (10) days prior to the Board of Zoning Appeals meeting. Failure to comply with posting requirements will result in removal of the application from the Board's public hearing agenda and forfeiture of the applications fee. It is the responsibility of the developer/owner of the property owner to notify the Zoning Administrator of the need for a replacement any time the sign has been damaged or removed.

### **15.4.3 Special Exceptions**

The Board of Zoning Appeals may hear and decide upon requests for special exception approval only for those uses specifically listed as special exception uses in a particular zoning district.

- (a) A request for approval of a Special Exception use can be submitted anytime. Such request must be in writing, and mailed or delivered to the County Zoning Administrator.
- (b) A request for approval of a Special Exception use should include a statement of justification and a visual depiction of how the site of the use demonstrating how establishment of the requested use shall address and development conditions and/or the criteria for special exception uses in Section 10.5 of this Ordinance. Such visual depiction may be sketched on a recorded plat of the property or site where the special exception is proposed to operate.
- (c) The Board shall hold one or more public hearings, at which any party may appear in person, by agent or attorney, prior to taking action on a special exception use approval request.
- (d) All properties, which are the subject of a special exception use application, shall be posted with a minimum of one sign, provided by the Department of Planning and Codes Enforcement, of a size and location that is clearly visible from the abutting road/street. Such sign(s) shall include the title of the

proposed special exception use and the zoning district in which it is located. Signs shall be posted by the applicant a minimum of ten (10) days prior to the Board of Zoning Appeals meeting. Failure to comply with posting requirements will result in removal of the application from the Board's public hearing agenda and forfeiture of the applications fee. It is the responsibility of the developer/owner of the property owner to notify the Zoning Administrator of the need for a replacement any time the sign has been damaged or removed. All signs shall be removed within 30 days of the final public hearing on a special exception use request.

- (e) In approving a special exception, the Board of Zoning Appeals may impose such conditions, safeguards and restrictions upon the premises benefited by the special exception as may be necessary to avoid, minimize or mitigate any potentially adverse or injurious effect of such special exceptions upon other property in the neighborhood, and to carry out the general purpose and intent of this Ordinance. Conditions and restrictions may include, but are not limited to, those related to fencing, planting or other landscaping, additional set backs from property lines, location and arrangement of lighting, setting of reasonable time limitations and other reasonable requirements deemed necessary to safeguard the interest of the general public. The Board may require a guarantee or bond to ensure that conditions imposed will be complied with.
- (f) In conjunction with the Board's action to approve a special exception use, the Board shall make written findings certifying compliance with the criteria for a special exception in Section 10.5 and any other conditions and regulations applicable to the proposed use. If the Board denies approval of the request, it shall specify its reasons for such denial.
- (g) The issuance of a permit for a special exception does not authorize the establishment or extension of any use nor the development, construction, reconstruction, alteration or moving of any building or structure, but shall merely authorize the preparation, filing and processing of applications for any permits or approvals which may be required by the codes and ordinances of the County, including, but not limited to, a building permit, a certificate of occupancy, site plan and subdivision approval and a zoning permit.
- (h) Unless a longer period of validity is specifically approved as a part of such application, no special exception permit shall be valid for a period longer than five (5) years from the date on which the special exception was granted, unless within such five (5) year period: (1) a building permit is obtained and the erection or alteration of a structure is started and diligently pursued, or (2) an occupancy permit is obtained and a use commenced; or 3) a zoning permit is issued. Such period of validity may be extended for good cause shown, by application to the body that approved the special exception.

- (i) As a condition of approval, a special exception permit may be granted for a specific period of time less than five (5) years with expiration of the approval to occur at the termination of said period. In such case, an extension may be granted prior to expiration by the Board of Zoning Appeals, upon written application, without notice or hearing. After expiration, no extension may be granted without complying with the requirements for an initial application for a special exception.

## **Section 15.5 Hearings and Notices**

- 15.5.1** Upon receiving a recommendation from the Zoning Administrator, the Chairman of the Board of Zoning Appeals will determine the time, date and place for the next meeting. The Zoning Administrator will notify all members of the Board of Zoning Appeals, prepare an agenda and transmit to each member of the Board all the papers constituting the record upon which an appeal, variance, or special exception application have been taken.
- 15.5.2** A processing and mailing fee will be required with any appeal or application for approval of a variance or special exception use. Should an applicant decide to defer having the Board of Zoning Appeals' hearing of its application after the hearing has been advertised, additional fees for advertisement of the next hearing shall be imposed.
- 15.5.3** The Zoning Administrator shall advertise the Board of Zoning Appeals meeting in the following manner:
  - (a) Public notice of all meetings shall be provided by publication in a newspaper of general circulation in the County, no less than fifteen (15) days prior to the meeting inviting all interested parties attend.
  - (b) A form letter will be concurrently be prepared by the Zoning Administrator for mailing **by the applicant** no less than fifteen (15) days prior to the meeting to all property owners abutting the affected property. The letter will specify the details of the application under consideration, the date, time and place of the Board of Zoning Appeals meeting. Letters shall be mailed with a return receipt request and the applicant will provide evidence that such mailing has occurred by presentation of such receipts. Failure to comply with providing such evidence will be cause for the application to be removed from the agenda.
  - (c) The agenda for the meeting shall be posted by the Clerk to Council on the Official Bulletin Board a minimum of 24 hours prior to the meeting. The same agenda will be posted on the meeting room door 24 hours in advance of the meeting.

- (d) The applicant and/or his representative, and any other party requesting notification in writing will be informed as to when and where the meeting will be held. A note of this effort will become a matter of record in the minutes as per SC Code 30-4-80, (FOIA).

#### **15.5.4 Hearing Proceedings**

- (a) The Chairman of the Board of Zoning Appeals will call the meeting to order, determine a quorum, and initiate approval of the minutes of the previous meeting.
- (b) The Zoning Administrator will initially describe the circumstances pertinent to the appeal or application for a variance or special exception use approval to the Board and make his recommendation as to how ordinances adopted by County Council support or do not support the applications before them for consideration. The applicant/or his representative will be given the opportunity to present their perspective of the situation. The Zoning Administrator and the applicant may provide witnesses in their behalf.
- (c) Following the initial definition of both sides of the issue, the Chairman shall open the floor for public comment. All interested parties will be given an opportunity to support or oppose the request. The Board members will be given an opportunity to ask questions of any of the speakers.
  - (1) The Board Chairman will be judicious in keeping control of the discussion and request the participants not make statements that would repeat information that has already been established. The Chairman may limit each speaker to three (3) minutes to have sufficient time for all parties. Persons that continuously interrupt the testimony and/or creates behavior that is disruptive to the legal proceedings may be physically removed.
  - (2) In the case of contempt by a party, witness, or other person before the Board of Zoning Appeals, the Board may certify this fact to the circuit court of the county and the judge of the court, in open court or chambers, after hearing may impose a penalty as authorized by law.
- (d) Following discussion by the Board, a member of the Board will propose a decision and the Board will vote on that proposal.

#### **Section 15.6 Decisions of the Board of Zoning Appeals**

In exercising the previously referenced powers, the Board of Zoning Appeals may, in conformity with the provision of this Ordinance, reverse or affirm, wholly or in part, or modify the order, requirements, decisions or determination of the administrative official, and to that end shall have all the powers of the officer from whom an appeal is taken and

may issue or direct the issuance of a permit, and in case of contempt may certify such fact to the circuit court having jurisdiction.

The concurring vote of four (4) members of the Board of Zoning Appeals shall be necessary to reverse any order, requirement, decision or determination of the Zoning Administrator; or to decide in favor of the applicant on any matter upon which it is required to pass under this Ordinance; or to affect any variation of this Ordinance. On all matters brought before the Board of Zoning Appeals, the Board shall inform in writing all the parties involved of its decisions and the reasons therefore.

**Section 15.7 Appeals from Decisions of the Board of Zoning Appeals**

Any person who may have a substantial interest in any decision of the Board of Zoning Appeals or an officer or agent of the appropriate governing authority may appeal any decision of the Board to the Circuit Court in and for County of Dorchester by filing with the clerk of such a petition in writing setting forth plainly, fully and distinctly wherein such decision is contrary to law. Such appeal shall be filed within thirty (30) days after the decision of the Board is rendered. The Circuit Court shall act upon the appeal in accord with §6-29-830 through §6-29-840.

## ARTICLE XVI. AMENDMENTS

### Section 16.1 General Provisions

The Zoning and Land Development Standards Ordinance, including the Official Zoning Map, may be amended, supplemented, changed or repealed from time to time by the Dorchester County Council, in accord with the procedures outlined below.

### Section 16.2 Initiation of Amendments

#### 16.2.1 Text Amendments

Proposed changes or amendments to the Zoning and Land Development Standards Ordinance text may be initiated by County Council, the County Planning Commission, or Board of Zoning Appeals. Petitions for a text change or amendment by any interested property owner or resident of Dorchester County may be presented to County Council's Planning and Development and Building Committee.

- (a) All requests from landowners or any other action for change to applicable zoning of property shall constitute a request for amendment to this Ordinance and may be initiated by submission of an application for rezoning to the Zoning Administrator. All requests by landowners for amendments to this Ordinance must be submitted in writing on a form provided by County Council. Such request shall be signed by the property owner and such signature shall be either witnessed by the Planning Director or notarized.
- (b) In no instance shall a property owner or owners initiate action for a zoning amendment affecting the same parcel of property or any part thereof, more often than once every twelve (12) months.

### Section 16.3 Applications and Fees

#### 16.3.1 Complete Applications

An application for any change or amendment to the text or map of this Ordinance shall be deemed as "complete" which includes at a minimum the following:

- (a) A legal description and street address of the subject property, together with a property boundary map if subject property is not explicitly delineated on the Zoning Map;
- (b) Name, address, and phone number of applicant;

- (c) Name of property owner(s) and applicant's interest in the property if not the owner in fee simple title;
- (d) Filing date of application;
- (e) Existing and proposed zoning and existing use of tract proposed for rezoning;
- (f) Zoning and land uses of adjacent properties;
- (g) A traffic study, per the submission requirements of Article XIX. The requirement for submission of a traffic study may be waived by the Zoning Administrator if in his/her opinion uses permitted in the proposed zoning district will not significantly change the traffic generation from those permitted by the existing zoning.
- (h) Any other information deemed relevant by the Zoning Administrator; and
- (i) Applicant's and property owner's signatures witnessed by the Planning Director or notarized.

**16.3.2** When a proposed amendment to the Ordinance or Map is initiated by individuals or parties other than County Council or the Planning Commission, a fee shall be paid for each application to cover administrative and advertising expenses associated with its processing as specified in the most recent fee schedule adopted by County Council.

## **Section 16.4 Review Process**

### **16.4.1 Planning Staff Review**

The Department of Planning staff shall review all proposed amendments and requests for changes in the zoning of property and make written recommendations to the Planning Commission within thirty (30) days of initiation of a text amendment proposal by County Council or the Planning Commission or within thirty (30) days of receipt of a completed zoning amendment application.

### **16.4.2 Planning Commission Review**

All proposed amendments shall be submitted to the Planning Commission for its review and recommendation. The Planning Commission shall have thirty (30) days, from the first regularly scheduled meeting on which agenda the amendment is placed, within which to discuss the amendment proposal or rezoning application at a public meeting and submit its report to County Council. If there are outstanding issues for the applicant to resolve prior to a recommendation being made by the Planning Commission, the applicant may request, in writing, for the

Commission defer making its recommendation for a specified period of time. Unless a written request for a deferral is received, if said Commission fails to submit a report summarizing its discussions, concerns and/or suggestions within the thirty (30) day period, it shall be deemed to have recommended approval of the requested amendment.

### **16.4.3 County Council Consideration**

Upon receipt of an application transmitted by the Planning Commission for an amendment to the Zoning and Land Development Standards Ordinance or Map, and the Planning Commission staff's written report, County Council shall place the proposal on its agenda for the next scheduled public hearing.

- (a) No amendment to this Ordinance or map shall be considered by County Council, until a public hearing that has been advertised and conducted according to procedures prescribed in this Section, is held. If County Council has authorized the Planning Commission to hold a public hearing on a proposed amendment, Council may elect to consider the amendment proposal without holding a second public hearing.
- (b) After conducting a duly advertised public hearing on a proposed amendment to this Ordinance or the Zoning Map, County Council shall consider all information presented at the public hearing, staff review comments, and the Planning Commission recommendation. Council shall have the option of forwarding the proposal and all such information to its Planning and Development and Building Committee in order to gain additional facts or seek a resolution of any disputes related to the rezoning case. In such cases, County Council may defer additional action on the application until the Planning and Development and Building Committee has reported out on its discussions and made a recommendation on the zoning amendment under consideration.
- (c) In accord with SC Code §6-29-760, Council shall inform the Planning Commission of any substantive changes or departures from the amendment proposal reviewed and recommended by the Planning Commission prior to taking action, allowing the Planning Commission opportunity to make further recommendations.

## **Section 16.5 Required Findings**

**16.5.1** Before any map amendment is approved by County Council, the Planning Commission and County Council shall consider and make findings regarding the following:

- (a) Whether the proposed rezoning is consistent with the adopted comprehensive plan;

- (b) Whether the proposed rezoning is consistent with the intent and purpose of the zoning ordinance and the district regulations being amended;
- (c) Whether there are any changed or changing conditions in the area affected that make approval of the request appropriate;
- (d) Whether the range of uses permitted in the zoning district being requested are compatible with uses permitted on property in the immediate vicinity;
- (e) Whether adequate utility, septic and water, transportation and other public services exist or can be provided to serve the uses that could be developed on the property if rezoned;
- (f) The effect of the proposed rezoning on the area's ground water supply if public water service is not available to the property;
- (g) The effect of the uses that would be permitted by the proposed rezoning on the structural capacity of soils;
- (h) The effect of uses that would be permitted by the proposed rezoning on stormwater drainage, runoff and absorption, and the affect such will have on ground and surface water quality;
- (i) The impact that uses permitted by the proposed rezoning would have on the volume of vehicular and pedestrian traffic or traffic safety;
- (j) Whether the proposed rezoning would implement sufficient measures to mitigate potential impacts of construction traffic on existing neighborhoods during development;
- (k) Whether a reasonably viable economic use of the subject property exists under current zoning;
- (l) Whether the proposed rezoning encourages economic development activities in areas designated for such activity in the comprehensive plan;
- (m) The effect of the proposed rezoning to provide moderate housing opportunities for residents of Dorchester County;
- (n) Whether the proposed rezoning encourages conservation of properties and land values and the most appropriate use of land in the County;
- (o) Whether the proposed rezoning considers trends of growth or changes, employment or economic factors, the need for affordable housing, probable future economic and population growth of the County;

- (p) The potential effect of the proposed rezoning on natural, scenic, archaeological or historic features of significance; and
- (q) The effect of the proposed rezoning on environmentally sensitive land or natural features, wildlife habitat, vegetation, and water and air quality.

**16.5.2** In the absence of such findings listed in subsection 16.5.1, Council and the Planning Commission may find that one of the following conditions apply that justify consideration of the rezoning:

- (a) The original zoning classification given to the property was improper or inappropriate given land use and development conditions at the time the classification was assigned.
- (b) There have been major changes of an economic, physical, or social nature within the area involved which were not anticipated in the county's adopted Comprehensive Plan and which have substantially altered the basic character of such area. In the event that such finding is made, County Council shall subsequently initiate the preparation and adoption of an amendment to the comprehensive plan to reflect such changes.

**16.5.3** All findings shall be recorded in the minutes and records of the Planning Commission and County Council meetings on the proposed amendment.

## **Section 16.6 County Council Action**

Upon completion of the requirements specified in §16.4 and §16.5, County Council may take action on the zoning ordinance or map amendment under consideration.

**16.6.1** No action will be taken on a rezoning request that has not been acted upon within four (4) months from the date of the original public hearing without placement of the request on the next available public hearing agenda. In such case, the request will be readvertised and property reposted in accord with §16.7 below, without requiring the applicant to pay an additional fee. The requirement for an additional public hearing may be waived if Council is actively considering a proposed text amendment or if active negotiations are under way between the applicant for a map change and the opposition in attempt to reach a compromise.

**16.6.2** County Council may disapprove, approve, or conditionally approve any and all applications or requests for change in zoning (i.e. rezoning). If deemed to be in the public interest, County Council may require that the applicant exclude specific uses otherwise allowed in the zoning district proposed as a condition of the amendment approval.

- 16.6.3** The record of County Council’s final action shall specify Council’s reasons for denial or approval of the proposed text or map amendment and the specific conditions applicable to an amendment approved with conditions.

## **Section 16.7 Public Notice Requirements**

### **16.7.1 Notice of Hearing**

Notice of a public hearing on a rezoning, or zoning text amendment, shall be published in a newspaper of general circulation in the County at least fifteen (15) days prior to the hearing. Such notice shall specify the ordinance section or legal parcel number that is the subject of the hearing and the time and place of the hearing to be held.

### **16.7.2 Landowner Notice**

If the landowner whose land is the subject of a proposed amendment will be allowed to present oral or written comments to the Planning Commission, at least ten (10) days notice, and an opportunity to comment in the same manner must be given to all other interested members of the public, including owners of adjoining properties.

### **16.7.3 Posting**

In cases where the zoning of a property is proposed for change, the property for which a zoning change has been requested shall be posted by the applicant with at least one (1) sign, provided by the Department of Planning and Codes Enforcement, in a conspicuous location or locations where it is clearly visible from all abutting road(s) and properties.

- (a) Such sign(s) shall be posted by the applicant at least ten (10) days prior to the Planning Commission’s review of the amendment request; or, if Planning Commission review is scheduled after the public hearing required above, such sign(s) shall be posted at least fifteen (15) days prior to the public hearing. If a second public hearing on the proposed rezoning is held by County Council, the property shall be posted again at least fifteen (15) days prior to the second public hearing.
- (b) The developer or landowner must maintain such sign(s) so that they remain clearly visible from the abutting road(s) and properties, and shall notify the Zoning Administrator of the need for replacement signs immediately upon discovery that such sign(s) have been damaged or removed.
- (c) Failure to comply with the public notice or posting requirements will result in the removal of an application from the public hearing agenda.

**Section 16.8 Effective Date**

Any ordinance affecting a change in the text of the Dorchester County Zoning and Land Development Standards Ordinance or official Zoning Map shall become effective the day following the Council meeting at which action has been taken.

**Section 16.9 Challenges**

**16.9.1** An owner of adjoining land or his representative has standing to bring action contesting the ordinance or amendment approved by County Council. However, this provision does not create any new substantive right in any party doing so.

**16.9.2** No challenge to the adequacy of notice or challenge to the validity of a regulation or map, or amendment thereof, whether enacted before or after the effective date of this section, may be made more than sixty (60) days after the decision of County Council if there has been substantial compliance with the notice requirements of this section or established procedures of County Council or the Planning Commission.