

1974 WL 27143 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

December 31, 1974

***1 RE: Method of Procedure for Amendments to Zoning Regulations**

Mr. R. Linwood Altman
Chairman
Georgetown County Planning Commission
Post Office Box 164
Pawley's Island, SC 29585

Dear Mr. Altman:

Your letter of December 9, 1974, requests an opinion of this office as to the procedure required by Section 14-350.18, South Carolina Code of Laws (1962), in making amendments to zoning regulations. Specifically, you have inquired whether the Georgetown City Council can make amendments not recommended by the Planning Commission's zoning plan, without resubmitting the amendments to the Planning Commission. Section 14-350.18 provides, *inter alia*, that:

No change in or departure from the text or maps as certified by the local planning commission shall be made pursuant to such hearing unless such change or departure be first submitted to the planning commission for review and recommendation.

Your question is actually two-fold: (1) must the amendment be re-submitted to the planning commission; and (2) must new public hearing be held on the amendment. The language of the statute is clear on the first point in that any amendment or change to the existing zoning ordinance as certified by the Planning Commission, must first be submitted to the Commission for review and recommendation before the governing authority can take any a action. Once the Planning Commission has made its recommendation, the governing authority may approve or disapprove that recommendation. If the governing authority should disapprove the plan as recommended, there is no requirement that the amendment be re-submitted to the Planning Commission for additional review and recommendation. However, if the governing authority should desire to modify the proposed amendment to the zoning ordinance, this would, in fact, amount to a 'new amendment,' and thus require submission to the Planning Commission for review and recommendation.

It is my understanding that the Litchfield-By-The-Sea zoning change has been mutually resolved by the interested parties. While it is the normal policy of this office not to issue legal opinions on moot questions, I will discuss the facts of this case as I understand them from our conversations in order to illustrate how I think the procedure should work. The Planned Unit Development submitted by the developers of Litchfield-By-The-Sea included a proposed hotel. However, prior to the public hearing on this change, it was agreed by the developers and the Planning Commission that the amendment was really for a guest house, and it was treated as such at the public hearing and in the commission's report. Subsequent to the Commission's report to the County Council, the County Council approved a change to the zoning ordinance to allow for the construction of a hotel. Since this was not an approval or disapproval of the plan as submitted by the developer and recommended by the Planning Commission, but in fact a modification thereof, the modified plan amounted to a new amendment which should have been submitted to the Planning Commission for review and recommendation.

***2** As to the second point, there is no requirement for an additional public hearing, even in cases where the County Council seeks to modify the Commission's plan, if the proposed amended use was fully 'aired' at the initial public hearing. It is not possible for me to determine from your letter and the accompanying news clips whether in fact the possibility of a 'hotel' rather

than a 'guest house' was fully discussed at the public hearing. If it was discussed, but rejected by the Commission, there is no requirement for an additional public hearing.

I hope this may be of some guidance to the Georgetown County Council and the Planning Commission. If I can be of further assistance to you in this matter, please do not hesitate to contact me.

Very truly yours,

Richard B. Kale, Jr.
Assistant Attorney General

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