

Benjamin Hitchings & Jim Joyce  
January 2021

## Overview

As local governments, developers, and community stakeholders work to build agreement on proposed development projects, they have long sought a mechanism for customizing development decisions to the context of a given project and site. The resulting tools developed over the years to accomplish this goal have included conditional and special use permits, conditional use district zoning, and more recently, conditional zoning. Chapter 160D continues this evolution to help clarify and simplify the process for attaching site-specific conditions as part of the development approval process.

The following sections outline basic procedures, key changes, policy considerations, statutory authority, and sample ordinance language for using conditional zoning. Of course, as with any policy decisions and ordinance language, each jurisdiction should carefully consider the preferred approach for that community. The sample ordinance language is included to provide examples, but any community that draws from this sample language must tailor it to the context of its codes and local circumstances.

## Context: Pre-160D Procedures

A longstanding challenge in North Carolina land use law has been understanding the difference between conditional zoning, conditional use permits/special use permits, and conditional use districts.

- **Conditional zoning** is a legislative process in which an applicant proposes, and the local government considers, a map amendment that includes additional conditions. Conventional zoning map amendments change the zoning district applicable to a piece of property, but do not include any standards beyond the base standards of the zoning ordinance. Conditional zoning allows the local government and the applicant to agree on additional conditions that may be appropriate for a particular project within the context of a legislative rezoning.
  - **This method continues to be an option under Chapter 160D.** Chapter 160D refers to this process as “conditional zoning” or “conditional district zoning.”

This Chapter 160D Guidance is one in a series of guidance documents intended to provide supplemental information on specific topics. Additional guidance documents, training videos, an explanatory book, and other Chapter 160D resources are available at [nc160D.sog.unc.edu](http://nc160D.sog.unc.edu).

- **Special Use Permits (formerly called conditional use permits or special exceptions)** are site-specific approvals that require a quasi-judicial process. This process is often used for uses that might only fit a particular area in certain situations, or for which some additional scrutiny is desired. These standards generally involve some discretion, so the local government uses a quasi-judicial process to help make sure the rights of all parties to a fair hearing are protected. Some zoning districts allow certain uses only as “special uses,” and the process for approving these special uses requires the applicant to present—and the decision-making body to consider—competent, material, and substantial evidence that the proposed use meets certain standards that are outlined in the ordinance. If sufficient evidence is presented that the proposal meets the standards, the permit is issued; if sufficient evidence is not presented, the permit is denied.
  - **This method continues to be an option under Chapter 160D.** Chapter 160D refers to these permits as “special use permits.”
- **Conditional Use District Zoning** is a process that combines a legislative rezoning with a quasi-judicial conditional use permit approval. The legislative process rezones the property to a district that requires *all* uses to obtain a quasi-judicial conditional use permit, and a quasi-judicial process (often run in parallel) permits the imposition of site-specific conditions. This hybrid, combined process was designed to allow conditions to be applied to rezoning projects while staying within the former scope of local government authority. However, it is complicated, can be confusing, and requires administering two parallel processes to achieve one goal.
  - **This method is no longer an option under Chapter 160D.**

The existence of these three very different types of decisions with such similar names has been an ongoing source of confusion for participants in the zoning process, including public officials, staff, applicants, and the public.

## Basic Provisions

Chapter 160D adopts several measures to reduce this confusion:

- **Separate nomenclature.** Chapter 160D applies the term “conditional districts” or “conditional zoning” exclusively to legislative decisions, as in Sections 160D-102(7) and 160D-703; and it designates the term “special use permit” exclusively for quasi-judicial decisions, as in Sections 160D-102(30) and 160D-705(c). The statutes no longer use the term “conditional use permit”.
- **Elimination of Conditional Use District Zoning:** A more substantive change is the removal of authority to use conditional use district zoning. A zoning ordinance may allow legislative conditional zoning. It may also allow quasi-judicial special use permits. But it may no longer

divide the decision-making process for one project into two parallel processes with different legal requirements. As of January 1, 2021, special or conditional use *districts* will become conditional districts, and special or conditional use *permits* will be deemed special use permits. This update happens by operation of law—specifically, Section 2.9(b) of Session Law 2019-111—so it happens automatically; no districts or permits will need to be re-approved. Within a conditional district, any conditions that applied to the district will still apply, but a local government cannot require new special use permits for uses in these districts. Some jurisdictions may want to update their zoning maps in order to clarify what conditions apply to what property.

- **Administrative modifications:** Without additional authority, one potential challenge with conditional zonings is that even minor revisions to already-approved projects may need to go through a full rezoning process. An amendment to the zoning map or to site-specific zoning conditions can be a time-consuming process, especially for making minor changes. As a result, Chapter 160D-703(b) authorizes local governments to establish a process for allowing minor modifications to be approved administratively, as long as the proposed changes don't "involve a change in uses permitted or the density of overall development." Any changes that don't qualify as minor modifications have to go through the same process as a zoning map amendment.
- **Individual modifications in a multi-property conditional zoning:** Chapter 160D-703(b) also allows individual property owners who are part of a larger conditional rezoning to propose the revision of conditions on their property only, as long as the changes would not affect the ability of the other property owners to meet their required conditions.
- **Transition period.** Section 2.9(b) of Session Law 2019-111 addresses the transition for existing conditional use districts. Any conditional use district or special use district in effect on January 1, 2021, becomes a conditional district. Any special or conditional use permit issued separately or as part of those approvals remains valid and is deemed a special use permit after that date. This change is effective without the need to re-adopt any prior conditional zoning or special use approvals. However, local governments may want to consider including a provision in their ordinance stating that, as of January 1, 2021, all past conditional zoning, conditional use district zoning, and special use permit approvals will be described by the updated nomenclature. Local jurisdictions may also want to update district names in their zoning maps.
- **Obtaining Property Owner Signatures for Conditions in Writing:** One other provision that is now expressly required in N.C.G.S 160D-703(b) is to acquire the signatures of all property owners consenting to the conditions included as part of the conditional zoning. There is not a required form, so the written consent could take multiple forms -- a signature on a decision document listing the conditions, a signature block on the site plan listing

conditions, an affidavit from the petitioner consenting to the agreed upon conditions as reflected in the specific decision, or otherwise. A local government may also want to only make the conditional zoning effective when these signatures have been provided to prevent a situation in which the local government grants the zoning entitlement without obtaining the corresponding commitment from the applicant to abide by the conditions of approval.

## Key Considerations

Local governments have a number of policy choices to make regarding the establishment and use of conditional zoning districts. These include the following:

- **Should our local government authorize the use of conditional zoning?** An initial question for local governments is whether they should authorize conditional zoning, if their local ordinances do not already include it. One of the features that governing boards often like about conditional zoning is that it uses the more familiar legislative process, which gives them strong legal authority to make the decisions they feel are in the best interests of the community, and does not limit their ability to reach out to and get input from stakeholders, or to negotiate directly with applicants. This is in contrast to the more bounded decisions of special use permits, in which the decision-making body is not allowed to investigate a project or take input outside of the hearing, and is obligated to issue the permit if the applicant meets the required findings; and the limited scope of administrative decisions, in which the project must be approved if it meets the stated ordinance requirements. If a jurisdiction elects to allow the use of conditional zoning, it can make this choice clear by including a provision in the zoning or unified development ordinance describing the process and whatever parameters the governing board chooses to set (such as only allowing conditions to be more stringent than the comparable conventional district).
- **What kinds of projects should involve conditional zoning and which should require special use permits?** The special use permit process often works well in situations in which the potential land use might be appropriate in the proposed location, and the question is simply a matter of confirming that it addresses some key community considerations, as modified by any appropriate conditions of approval. More complicated projects and sites, as well as those projects for which greater public input is desired, may benefit from the greater discussion that can occur with conditional zoning.
- **In what kinds of zoning districts should conditional zoning be authorized?** Communities often authorize conditional zoning in all zoning districts to allow for appropriate customization of proposed development projects wherever they might be located in the community. However, they could certainly choose to limit where conditional zoning is allowed; for example, by focusing on areas that are undergoing

significant change or that transition between two distinctly different areas where development of a more customized solution is desirable.

- **What kinds of conditions should be allowed?** Another policy question is whether to allow conditions that are more restrictive *or less restrictive* than existing development standards, or to limit conditions to those that are more restrictive than existing standards. The latter approach may make sense in fast-growing communities with significant greenfield areas that want to use conditional zoning to help encourage projects with higher standards. Allowing conditions of both kinds may make more sense in communities with limited greenfield opportunities or more constrained potential development sites that may necessitate some relief from current requirements in order for projects to work physically and economically.
- **Should a site plan or concept plan to be required?** Many communities that authorize conditional zoning request that applicants provide a site plan, or in some cases, a concept plan, as part of the rezoning application. On one hand, this helps the local government to better understand and evaluate the proposed project, and usually becomes a mutually-agreed-upon conditional of approval to help ensure appropriate follow through and to provide both the local government and the applicant with greater certainty about the scope of permitted development. In addition, it helps to demonstrate that the applicant has worked through the major features of the project and is ready to move forward with development after receiving approval. On the other hand, some applicants may balk at, or may not be in a position to spend, the substantial time and expense required to prepare a full site plan prior to approval of their proposed rezoning. Depending on the degree to which the local government shares this concern (or wishes to encourage or discourage more complex developments), it might consider requiring a sketch plan that is short of a full site plan but includes information such as the proposed development envelope, the general scope of building sizes and uses, and the major access points and circulation.
- **Should minor modifications be approved administratively?** Another consideration for local governments is whether to allow proposed minor modifications to approved conditional rezonings to be handled administratively. This can help applicants, boards, and staff avoid going through a full rezoning process simply to change minor features of the site plan or other project components, such as minor adjustments to building orientation, parking layout, or other minor elements of the project. The SOG 160D Guidance series includes a separate write-up specifically devoted to this topic (see 160D Guidance #1: Administrative Modifications).

## Statutory Authorization

N.C.G.S. § 160D-102 defines “conditional zoning” and “special use permit” as follows:

(7) Conditional zoning. - A legislative zoning map amendment with site-specific conditions incorporated into the zoning map amendment.

(30) Special use permit. - A permit issued to authorize development or land uses in a particular zoning district upon presentation of competent, material, and substantial evidence establishing compliance with one or more general standards requiring that judgment and discretion be exercised as well as compliance with specific standards. The term includes permits previously referred to as conditional use permits or special exceptions.

N.C.G.S. § 160D-703 states:

(a) Types of Zoning Districts. – A local government may divide its territorial jurisdiction into zoning districts of any number, shape, and area deemed best suited to carry out the purposes of this Article. Within those districts, it may regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings, structures, or land. Zoning districts may include, but shall not be limited to, the following:

(1) Conventional districts, in which a variety of uses are allowed as permitted uses or uses by right and that may also include uses permitted only with a special use permit.

(2) Conditional districts, in which site plans or individualized development conditions are imposed.

(3) Form-based districts, or development form controls, that address the physical form, mass, and density of structures, public spaces, and streetscapes.

(4) Overlay districts, in which different requirements are imposed on certain properties within one or more underlying conventional, conditional, or form-based districts.

(5) Districts allowed by charter.

(b) Conditional Districts. – Property may be placed in a conditional district only in response to a petition by all owners of the property to be included. Specific conditions may be proposed by the petitioner or the local government or its agencies, but only those conditions approved by the local government and consented to by the petitioner in writing may be incorporated into

the zoning regulations. Unless consented to by the petitioner in writing, in the exercise of the authority granted by this section, a local government may not require, enforce, or incorporate into the 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. Conditions and site-specific standards imposed in a conditional district shall be limited to those that address the conformance of the development and use of the site to local government ordinances, plans adopted pursuant to G.S. 160D-501, or the impacts reasonably expected to be generated by the development or use of the site. The zoning regulation may provide that defined minor modifications in conditional district standards that do not involve a change in uses permitted or the density of overall development permitted may be reviewed and approved administratively. Any other modification of the conditions and standards in a conditional 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, the owners of individual parcels may apply for modification of the conditions so long as the modification would not result in other properties failing to meet the terms of the conditions. Any modifications approved apply only to those properties whose owners petition for the modification.

N.C.G.S. § 160D-705(c) states:

**Special Use Permits.** - The regulations may provide that the board of adjustment, planning board, or governing board hear and decide special use permits in accordance with principles, conditions, safeguards, and procedures specified in the regulations. Reasonable and appropriate conditions and safeguards may be imposed upon these permits. Where appropriate, such conditions may include requirements that street and utility rights-of-way be dedicated to the public and that provision be made for recreational space and facilities. Conditions and safeguards imposed under this subsection shall not include requirements for which the local government does not have authority under statute to regulate nor requirements for which the courts have held to be unenforceable if imposed directly by the local government, 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. The regulations may provide that defined minor modifications to special use permits that do not involve a change in uses permitted or the density of overall development permitted may be reviewed and approved administratively. Any other modification or revocation of a special use permit shall follow the same process for approval as

is applicable to the approval of a special use permit. If multiple parcels of land are subject to a special use permit, the owners of individual parcels may apply for permit modification so long as the modification would not result in other properties failing to meet the terms of the special use permit or regulations. Any modifications approved apply only to those properties whose owners apply for the modification. The regulation may require that special use permits be recorded with the register of deeds.

### Sample Ordinance Language

- A. Purpose.** This ordinance authorizes the creation of conditional zoning districts proposed by the property owners and customized to the context of a particular development project or land use on a particular site. Each conditional zoning district includes one or more conditions of approval that help the project conform to the [INSERT TYPE OF JURISDICTION]'s adopted ordinances and plans, and mitigate the impacts reasonably expected to be generated by the development or use of the site.
- B. Procedure.** Each district may only be considered by the [INSERT NAME OF GOVERNING BOARD] through a legislative decision-making process, following the procedures for zoning map amendments outlined in this Ordinance.
- C. Initiating a Conditional Rezoning.** A conditional zoning proposal may only be considered by the [INSERT NAME OF GOVERNING BOARD] in response to the following:
- a. a petition signed by all owners of the property proposed for rezoning; or
  - b. a motion, during a properly noticed public hearing on a conventional rezoning petition, to convert that petition into a conditional rezoning petition. This procedure may only be used if (a) the alteration of the initial proposal, including the proposed conditions, is insubstantial, or (b) the initial notice is broad enough to indicate the possibility of conditional zoning being considered and the changes result from objections, debate and discussion at the properly noticed initial hearing.
- D. Base Standards for Conditional Districts.** For each general use zoning district, this ordinance authorizes the creation of parallel conditional zoning districts that have the same requirements as the general use district, as modified by one or more site-specific conditions.

- E. Conditions and Requirements.** The approval for each conditional district shall specify all conditions of development and use of land that differ from the requirements of the corresponding general use district. Specific conditions may be proposed by the petitioner, by staff, or by the [INSERT NAME OF GOVERNING BOARD], but only those conditions approved by the [INSERT NAME OF GOVERNING BOARD] and consented to by the petitioner in writing may be incorporated into the zoning regulations. Such conditions must be designed to help the project conform to the [INSERT TYPE OF JURISDICTION]'s adopted ordinances and plans, and/or mitigate the impacts reasonably expected to be generated by the development or use of the site. Such conditions may be stricter than the corresponding general use district. Such conditions may also relax applicable standards, as long as no dimensional standard is relaxed by more than 10%, the uses permitted by the corresponding general use district are not expanded, and the density of overall development is not increased beyond the density allowed in the corresponding general use district.
- F. Eligible Uses.** Uses allowed by right in the general use district are eligible to be considered in the corresponding conditional district, as modified by any conditions of approval.
- G. Development Standards.** Any proposed development within a conditional district must meet all requirements of the corresponding general use district, as modified by any conditions of approval.
- H. Submittal of Site Plan.** This zoning option is intended only for development proposals that are ready to proceed from plan approval to construction in a timely manner. As a result, each project must include a site plan [OR CONCEPT PLAN OR MASTER PLAN] that meets the site plan requirements listed in this ordinance [IF DESIRED, INSERT APPROPRIATE CROSS-REFERENCE], as modified by any site-specific conditions.
- I. Relationship to Overlay District Standards.** Regulations applicable in an overlay zoning district shall apply to a conditional district. If the standards governing a conditional district expressly conflict with those governing an overlay district, the more restrictive standards shall apply.
- J. Revisions to Approved Conditional Zonings.** [SEE SAMPLE ORDINANCE LANGUAGE IN *SOG 160D GUIDANCE #1 – ADMINISTRATIVE MODIFICATIONS*].

## Example Ordinance Provisions

### New Hanover County Unified Development Ordinance (Feb. 2020)

#### Article 3: Zoning Districts

##### **3.5.5. CONDITIONAL ZONING (CZ) DISTRICT**

###### **A. Purpose**

The Conditional Zoning (CZ) District option is established to address situations where a particular land use would be consistent with the Comprehensive Plan and the objectives of this Ordinance and only a specific use or multiple specific uses are proposed and appropriate for the development of a site. The district is primarily intended for use at transitions between zoning districts of dissimilar character where a particular use or uses, with restrictive conditions to safeguard adjacent land uses, can create a more orderly transition benefiting all affected parties and the community at-large. It is intended only for firm development proposals and should not be used for tentative projects without definitive plans.

###### **B. Applicability**

CZ districts are intended only for voluntary proposals submitted in the names of the owners of all property included in the petition/application.

###### **C. Districts Established**

The following conditional zoning districts, each bearing the designation "CZ", are hereby established: 1. The residential conditional zoning districts include: CZ-RA, CZ-AR, CZR20S, CZ-R-20, CZ-R15, CZ-R-10, CZ-R-7, CZ-R-5, CZ- RMF-L, CZ- RMF-M, CZ- RMF-MH, CZ-RMF-H. 2. The commercial and industrial conditional zoning districts include: CZ- B1, CZ- CB, CZ-B-2, CZ- O&I, CZ-SC, CZ- CS, CZ-I-1, and CZ-I-2.

###### **D. District Requirements**

###### **1. Eligible Uses**

Only uses allowed by right in the corresponding general use district are eligible for CZ district consideration and any such use within a CZ district shall, as a minimum requirement, satisfy all the regulations of the corresponding general use district.

###### **2. Additional Conditions and Requirements**

The approval for a specific CZ district shall specify all additional conditions and requirements that represent greater restrictions on development and use of the land

than the corresponding general use district regulations or other limitations on land that may be regulated by state law or local ordinance. Such conditions and requirements shall not specify ownership status, race, religion, character, or other exclusionary characteristics of the occupant(s), shall be objective, specific, and detailed to the extent necessary to accomplish their purpose, and shall relate rationally to making the approval compatible with the Comprehensive Plan, other pertinent requirements of this Ordinance, and to securing the public health, safety, morals, and welfare.

### 3. Conceptual Plan

Applications for establishment of a CZ district shall include a conceptual development plan depicting the proposed development configuration that conforms to the application requirements for conditional zonings in the Administrative Manual and any other conditions of approval proposed by the applicant.

### 4. Relationship to Overlay District Standards

Regulations governing development in an overlay zoning district shall apply in addition to the regulations governing development in the CZ district. If the standards governing a CZ district expressly conflict with those governing an overlay district, the more restrictive standards shall control.

\* \* \*

## 10.3.3. CONDITIONAL ZONING

### A. Purpose

The purpose of this section is to provide a uniform means for amending the Official Zoning Map to establish a Conditional Zoning (CZ) district. In cases where the standards of a general use zoning district are inadequate to ensure that development allowed by the district will conform to the County's adopted plans or to appropriately address the impacts expected to be generated by development, an applicant may apply for a conditional zoning. Conditional zoning establishes a parallel CZ district that is equivalent to a corresponding general use zoning district, but is subject to additional conditions or restrictions that the applicant and County mutually agree are necessary to ensure conformance to adopted plans and adequately address expected development impacts.

### B. Applicability

The procedure in this section is required for land to be classified to the Conditional Zoning (CZ) District (see Section 3.5.5).

**C. Conditional Zoning Procedure**

Figure 10.3.3.C summarizes the requirements and procedures in Section 10.2, Standard Review Procedures, that apply to conditional zonings. Subsections 1 through 7 below, specify the required procedure for a conditional zoning, including applicable additions or modifications to the standard review procedures.

**Figure 10.3.3.C: Summary of Conditional Zoning Procedure**



**1. Community Information Meeting**

The applicant shall conduct a community information meeting in accordance with Section 10.2.3, Community Information Meeting.

**2. Application Submittal and Acceptance**

Applications shall be submitted in accordance with Section 10.2.4, Application Submittal and Acceptance. The application shall include the following, together with all other information required by the Administrative Manual:

- a. A conceptual development plan depicting the proposed development configuration that conforms to the application requirements for conditional zonings in the Administrative Manual; and
- b. Any other conditions of approval proposed by the applicant.

**3. Staff Review and Action**

- a. If requested by the applicant, the TRC shall review the application and provide any comments on the proposed conditional zoning to the Planning Director, who shall transmit any comments received from the TRC in writing to the applicant.
- b. The Planning Director shall review the application, prepare a staff report, and provide a recommendation in accordance with Section 10.2.5, Staff Review and Action.

**4. Public Hearing Scheduling and Public Notification**

The Planning Director shall schedule public hearings and provide public notification in accordance with Section 10.2.6, Public Hearing Scheduling and Public Notification. After the public notice of scheduled hearing before the Planning Board is delivered to the newspapers, the conditions of approval proposed by the applicant shall not be amended so they are less

restrictive, including but not limited to less setback, more dwelling units, greater height, more access points, new uses, or fewer improvements.

### 5. Planning Board Review and Action

- a. The Planning Board shall conduct a public hearing on the application in accordance with Section 10.2.8, Advisory Body Review and Action. Planning Board members may propose additional conditions and requirements beyond those proposed by the applicant.
- b. After the public hearing on the application is concluded, the Planning Board shall make a recommendation on the application in accordance with Section 10.2.8, Advisory Body Review and Action, and Section 10.3.3.D, Conditional Zoning Review Standards. The Planning Board's recommendation shall address whether the proposed conditional zoning is consistent with the Comprehensive Plan.
- c. If the Planning Board's decision is to recommend denial of the application, the applicant must submit written notice to the Planning Director of the applicant's intent to proceed with a hearing before the Board of Commissioners within 10 calendar days of the Planning Board's decision. If the applicant does not provide such notice within that time period, the application shall be deemed withdrawn and no further review of the application shall occur.

### 6. Board of Commissioners Review and Action

- a. The Board of Commissioners shall conduct a public hearing on the application in accordance with Section 10.2.9, Decision-making Body Review and Action. One or more Commissioners may propose additional conditions or requirements beyond those proposed by the applicant.
- b. After the public hearing on the application is concluded, the Board of Commissioners shall make a decision on the application in accordance with Section 10.2.9, Decision-making Body Review and Action, and Section 10.3.3.D, Conditional Zoning Review Standards. The decision of the Board of Commissioners shall be one of the following:
  - i. Approve the application as submitted, subject to conditions of approval, including a conceptual development plan;
  - ii. Approve the application, subject to revised conditions of approval, including a conceptual development plan;
  - iii. Remand the application to the Planning Board for further consideration; or
  - iv. Deny the application.
- c. Prior to deciding to approve or deny a conditional zoning, the Board of Commissioners shall adopt a statement that:
  1. Addresses the consistency of the conditional zoning with the Comprehensive Plan by either:
    - i. Describing the consistency or inconsistency of the conditional zoning with the Comprehensive Plan; or

- ii. If the conditional zoning is approved, declaring that the approval is also deemed an amendment to the Comprehensive Plan, and providing an explanation of the change in conditions Board of Commissioners took into account in approving the conditional zoning to meet the development needs of the community. No additional request or application for amendment to the Comprehensive Plan shall be required.
2. Explains why the decision is reasonable and in the public interest.
- d. Conditions of approval shall comply with the following requirements:
  1. Only conditions of approval mutually agreed to by both the applicant and the Board of Commissioners are allowed.
  2. Conditions of approval shall be limited to those that address the conformance of the development and use of the site to the County Code and to the Comprehensive Plan or other adopted County plans, and those that address the impacts reasonably expected to be generated by the development or use of the site.
  3. Conditions that are less restrictive than the standards of the corresponding general use zoning district, applicable overlay district(s), or other standards of this Ordinance are prohibited.

## 7. Post-Decision Limitations and Actions

The post-decision limitations and actions in Section 10.2.10, Postdecision Limitations and Actions, apply, in addition to subsections a through c below.

- a. Effect of Approval Lands rezoned to a CZ district shall be subject to the standards applicable to the parallel general use zoning district, as modified by the more restrictive conditions approved by the applicant and imposed as conditions of approval by the Planning Board or the Board of Commissioners, as applicable. These standards and modifying conditions are binding on the land as an amendment to this Ordinance and the Zoning Map.
- b. Minor Deviations Subsequent applications for development within a conditional zoning district may include minor modifications from the approved conceptual site plan, provided such modifications have no material effect on the character of the approved development. Changes in the following constitute minor modifications that may be approved by the Planning Director:
  1. Modifications in building placement, provided the placement complies with the setbacks of the corresponding base zoning, and does not decrease the setbacks agreed to and approved during the conditional rezoning process by more than 10 percent;
  2. Increases to building size and height not to exceed 10 percent provided all other applicable standards of this Ordinance are met;
  3. Modifications to structure floor plans;

4. Modifications to the driveway locations not exceeding 10 percent of the length of the subject property line, or as required by the North Carolina Department of Transportation; and
5. Modifications to the proportion of housing type not to exceed 10 percent.

c. Expiration

1. If no building permit has been issued for the subject tract within two years after the date of approval of the conditional zoning, the Planning Director may, at the Planning Director's discretion, schedule a hearing for the Planning Board to consider whether active efforts are proceeding in accordance with the approved conditional zoning. If the Planning Board determines that such efforts are not proceeding, the Board may, at the Board's discretion, initiate a Zoning Map amendment in accordance with Section 10.3.2, Zoning Map Amendment, to rezone the land within the CZ district to its classification prior to approval, or to another zoning district the Board determines is appropriate.
2. A landowner may request, and the Planning Director may grant, one, one-year extension of the two-year time period established in subsection 1 above, if the Planning Director determines that site conditions have not substantially changed since the approval of the conditional zoning. The applicant must submit the request in writing prior to the expiration of the time period.
3. If site conditions have substantially changed since the approval of the CZ district, a landowner may request, and the Board of Commissioners may grant, at a regularly-scheduled public hearing, one extension, not to exceed three years, of the two-year time period established in subsection 1 above. The applicant must submit the request in writing prior to the expiration of the time period.
4. If any condition of approval of the CZ district is found to be illegal by a court of law, the approval of the CZ district shall be null and void, and the land within the district shall be rezoned to its classification prior to the approval of the conditional zoning in accordance with Section 10.3.2, Zoning Map Amendment.
5. If a violation of a condition of approval is not corrected within a reasonable time period after notice is provided in accordance with Article 12: Violations and Enforcement, the Planning Director may, at the Planning Director's discretion, submit an application to rezone lands in the CZ district to their classification prior to approval of the CZ district in accordance with Section 10.3.2, Zoning Map Amendment.

**D. Conditional Zoning Review Standards**

Adopting a CZ district is a matter committed to the legislative discretion of the Board of Commissioners. In determining whether to adopt or deny the proposed CZ district, the Board of Commissioners shall consider the review standards that apply to Zoning Map amendments in Section 10.3.2, Zoning Map Amendment.

## Town of Lillington, NC

### **Section 7.11 CONDITIONAL DISTRICTS**

Conditional Districts (CD) are districts with conditions voluntarily added by the applicant and approved in a legislative procedure by the Board of Commissioners in accordance with NCGS [Chapter 160D, Article 6 and NCGS 160D-703]. Conditional Districts provide for orderly and flexible development under the general policies of this ordinance without the constraints of some of the prescribed standards guiding by-right development. Conditional Districts may be used in any district but is not intended to relieve hardships that would otherwise be handled using a variance procedure.

#### **7.11.1 APPLICATION PROCEDURES**

##### A. Process Type: Legislative

##### B. Applicant and Property Information

1. Conditional District classification shall only be considered upon the request of the owners and/or their representatives of all the property to be included in the specific Conditional District request.
2. A Conditional District shall consist of land under unified control which may be planned and developed as a single development or as an approved programmed series of development phases by multiple developers. Unified control means that all land to be included within a Conditional District shall be owned or otherwise under the legal control of the applicant for a Conditional District.
3. The applicant shall be legally capable of providing a commitment to the town that the Conditional District development will comply with all documents, plans, standards and conditions ultimately approved by the Town.

##### C. Required Application Information

1. A Conditional District shall consist of the Existing Conditions Map, a Sketch Plan (may be waived by the Administrator as appropriate), and Master Plan; as well as any other plans, drawings, renderings, elevations, maps and documents specifically included as development documents for approval by the Board of Commissioners.
2. A Conditional District Master Plan is a site specific plan that is a condition of the Conditional District rezoning.
3. In addition to those items required for Master Plans, a Conditional District Master Plan shall, at a minimum, illustrate the following:
  - a. The underlying zoning districts and a full list of proposed uses consistent in character with those zoning districts. Such use classifications may be selected

from any of the uses, whether permitted, by right or with supplemental standards, allowed in the general zoning district upon which the Conditional District is based. Uses not otherwise permitted within the general zoning district shall not be permitted within the Conditional District;

- b. General traffic routes (external and internal) to and from the development with major access points identified;
- c. Tabular data, including the range and scope of proposed land uses, proposed densities, floor area ratios and impervious surface ratios as applicable to development type; and land areas devoted to each type of general land use and phase of development;
- d. A proposed development schedule if the project is to be phased.

### **7.11.2 EXCEPTION FOR CONDITIONAL DISTRICTS WITH USE LIMITATIONS ONLY**

If an applicant proposes a Conditional District which meets the following criteria, no Conditional District Master Plan shall be required in the application:

- A. The only proposed deviation in use from the underlying zoning is to impose additional limitations on the uses that will be allowed in the Conditional District.
- B. No other deviations from the standards of the underlying zoning are proposed in the Conditional District.

### **7.11.3 REVIEW PROCESS AND PUBLIC HEARING**

The procedure for approval of a Conditional District shall follow the procedure for review of Text Amendments and Rezonings (Map Amendments) as outlined in Section 7.10.

#### **A. Effect of Approval**

The applicant may proceed with development only after approval of the Conditional District Master Plan by the Board of Commissioners, followed by approval of any necessary Site or Subdivision Plans/Plats, except that all subsequent approvals shall be completed by the Administrator. The development and use of all land within the Conditional District shall be in keeping with the approved Master Plan and all applicable provisions therein.

#### **B. Substantial Changes**

Any substantial change to a Master Plan as noted below shall be reviewed by the Planning Board and approved or denied by the Board of Commissioners as an amended Conditional District. The following changes to a Conditional District Master Plan shall require approval by the Board of Commissioners:

1. Land area being added or removed from the Conditional District.
2. Modification of special performance criteria, design standards, or other requirements specified by the original approval.
3. A change in land use or development type beyond that permitted by the approved Conditional District Master Plan.

4. When there is introduction of a new vehicular access point to an existing street, road or thoroughfare not previously designated for access.
5. When there is an increase in the total number of residential dwelling units originally authorized by the approved Conditional District Master Plan.
6. When the total floor area of a development is increased more than 10% beyond the total floor area last approved by Board of Commissioners. Changes of less than 10 percent may be approved by the Administrator.

#### **7.11.4 RESCISSION OF CONDITIONAL DISTRICTS**

A. The Applicant shall secure a valid building or construction permit(s) within 2 years from date of approval of the Conditional District unless otherwise specified.

B. If such project is not complete or a valid building or construction permit is not in place at the end of the 2-year period, the Administrator shall notify the applicant of either such finding.

C. Within 60 calendar days of notification, the Administrator shall make a recommendation concerning the rescission of the Conditional District to the Board of Commissioners. D. The Board of Commissioners may then rescind the Conditional District, or extend the life of the Conditional District for a specified period of time. E. The rescission of a Conditional District shall follow the same procedure as was needed for approval.

### **Town of Mint Hill**

#### **Section 4.3 - Conditional Districts**

The Conditional District (CD) rezoning process allows for the establishment of certain uses that, because of their nature or scale, have particular impacts on both the immediate area and the community as a whole. The development of these uses cannot be predetermined or controlled by general district standards. In order to accommodate these uses, this Section establishes the Conditional District rezoning process. The process for approval of a CD is explained in Article 8, Subsection 8.5.2A. The rezoning of any parcel of land to a CD shall be a voluntary process initiated by the property owner or his authorized agent. Any area rezoned to a CD shall be in general compliance with the goals, objectives and implementation strategies of the adopted Comprehensive or Land Use Plan and all other plans and regulations officially adopted by the Board of Commissioners. The review process established in this Section provides for the accommodation of such uses by a reclassification of property into a CD, subject to specific conditions (which may exceed those that would otherwise be required for the use in question), which ensure compatibility of the use with the enjoyment of neighboring properties and in accordance with the general plans of development of the Town. [...] A Conditional District is not intended for securing early zoning for a proposal.

Once a property has been rezoned to a CD, it shall be referenced with the letters "CD" behind the name of the applicable general zoning district listed in Section 4.2. Thus, a property rezoned to a Conditional District in the B-G (general use district) shall appear on the Zoning Map as "B-G(CD)."

#### **8.5.2A - General Procedures for Approval of Conditional Districts.**

- A. *Permitted Uses and Development Requirements.* Potential uses which may be requested for a Conditional District shall be restricted to only those uses permitted in the corresponding general zoning district as designated in this Ordinance. Uses permitted in Conditional Districts shall be subject to all applicable development standards and requirements for that use listed in the corresponding general zoning districts as set forth elsewhere in this Ordinance and any particular requirements or restrictions approved and made a part of the Conditional District rezoning by the Board of Commissioners. Notwithstanding the foregoing, upon request of an Applicant, the Board of Commissioners may waive or vary a specific development standard or requirement if the Board of Commissioners find that such waiver or variance is not contrary to the public interest and not inconsistent with the intent and purposes of this Ordinance.
- B. *Approval Process.* The approval process for a Conditional District rezoning is as follows:
1. *Pre-Sketch Drawing (Mandatory).* An Applicant for a Conditional District rezoning approval shall submit a Pre-Sketch Drawing in accordance with Subsection [8.3\(A\)\(1\)](#) and the requirements of Subsection [8.2\(B\)\(1\)](#).
  2. *Initial Information Meeting with Staff (Mandatory).* All applicants for a Conditional District rezoning approval shall have an initial information meeting with the Administrator in accordance with Subsection [8.3\(A\)\(2\)](#).
  3. *Public Information Meeting (Mandatory for any Conditional District rezoning application for a nonresidential proposed use abutting a residentially zoned district and any proposed development project which meets the traffic thresholds requiring a Traffic Impact Analysis).* Where either of the applicable thresholds are met, the Applicant for a Conditional District rezoning approval shall conduct a PIM in accordance with Subsection [8.3\(A\)\(3\)](#) and submit and utilize the information gathered at the PIM when and as required in [Article 8](#).
  4. *Traffic Impact Analysis (Mandatory if thresholds for traffic are met for Conditional District Rezoning applications).* All Applicants for a Conditional District rezoning approval shall prepare and submit a TIA to the Administrator if the applicable daily or peak hour trips threshold requirements are satisfied in accordance with Subsection [8.3\(A\)\(4\)](#).
  5. *PCO Concept Plan (Mandatory if required by [Article 6](#)).* All applicants for a Conditional rezoning approval shall prepare and submit a PCO Concept Plan if a PCO Concept Plan is required for submission to the Stormwater Administrator (see [Article 6, Section 6.8](#)). Approval of a PCO Concept Plan, if applicable, is a prerequisite to continuing with Conditional District Rezoning Process.

6. *Sketch Plan (Mandatory)*. All applicants seeking a Conditional District rezoning approval shall prepare and submit a Sketch Plan to the Administrator in accordance with Subsection [8.3\(A\)\(5\)](#) and the requirements of Subsection [8.2\(B\)\(2\)](#). Note: A PCO Concept Plan is typically required for submission to the Stormwater Administrator at this time (see [Article 6, Section 6.8](#)).
7. *Initial Staff and TRC Review (Mandatory)*. In connection while applications for a Conditional District rezoning approval, the Town staff and TRC shall review the Sketch Plan and TIA (if applicable) in accordance with Subsection [8.3\(A\)\(6\)](#) above. Note: The Stormwater Administrator usually reviews the PCO Concept Plan at this time (see Subsection [8.3\(A\)\(6\)](#) and [Article 6, Section 6.8](#)).
8. *Informal Advisory Review by Planning Board and/or Board of Commissioners (Optional)*. In connection with all applications for Conditional District rezoning approvals, an Applicant may request an informal advisory review and initial comments from the Planning Board and/or the Board of Commissioners in accordance with Subsection [8.3\(A\)\(7\)](#).
9. *Formal Application and Zoning Plan Submittal for Conditional District Rezoning (Mandatory)*. After the Applicant has completed each of the applicable mandatory preapplication steps above, the Applicant may then submit the requisite number of hard copies of the completed application form meeting the requirements set forth in Subsections [8.2\(B\)\(3\)](#), [8.3\(B\)\(1\)](#) and the UDO Admin Manual in addition to any additional limitations or restrictions the Applicant may wish to propose for establishment of a Conditional District.
10. *Formal Staff and TRC Review (Mandatory)*. The Administrator and the TRC shall review the Zoning Plan in accordance with Subsection [8.3\(B\)\(3\)](#) to determine compliance with the requirements of this Ordinance. The Administrator shall make a written recommendation to the Planning Board and Board of Commissioners for Conditional District rezoning applications.
11. *Public Hearing, Planning Board Recommendation, and Town Board Decision (Mandatory)*.
  - a. The Conditional District rezoning approval decision is a legislative process subject to judicial review using the same procedures and standard of review as apply to general use district zoning decisions. In considering any petition for a Conditional District rezoning, the Town shall follow all of the procedures set forth for General Zoning and Text Amendments (Section 8.5.1A, Subsections (C) (Protest Petitions to Zoning District Changes), (D) (Notification Requirements), (E) (Public Hearing), (F) (Board Action on Public Hearing), (G) (Petition Withdrawal) and with regard to Subsection 8.5.1A(F) (Board Action on Public Hearing), the CD application shall be considered and treated as a zoning map amendment in accordance with Subsection 8.5.1A(F)(1).
  - b. The Board of Commissioners may not vote to rezone property to a Conditional 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 Board of Commissioners holds its organizational meeting following a municipal general election unless no person spoke against the rezoning at the public hearing . . . .