

CONDITIONAL ZONING

Purpose.

Conditional zoning districts are zoning districts in which the development and use of the property is subject to predetermined ordinance standards and the rules, regulations, and conditions imposed as part of the legislative decision creating the district and applying it to the particular property. The following zoning district categories are conditional zoning districts:

Parallel conditional zoning districts (a parallel conditional zoning district is a conditional zoning district in which the potential permitted use or uses are, except as limited by the conditions imposed on the district, of the same character or type as the use or uses permitted in a general district having a parallel designation or name.)

A conditional zoning district allows particular uses to be established only in accordance with specific standards and conditions pertaining to each individual development project. Some land uses are of such a nature or scale that they have significant impacts on both the immediately surrounding area and on the entire community which cannot be predetermined and controlled by general district standards. There are also circumstances in which a general district designation allowing such a use by right would not be appropriate for a particular property even though the use itself could, if properly planned, be appropriate for the property consistent with the objectives of these regulations, the adopted land use plan, adopted area plans and other long range plans. The review process established in this division provides for the accommodation of such uses by a reclassification of property into a conditional zoning district, subject to specific conditions which ensure compatibility of the use with the use and enjoyment of neighboring properties. A conditional zoning district is generally not intended for securing early zoning for a proposal, except when that proposal is consistent with an approved district or area plan or the proposal can demonstrate that public infrastructure needed to serve the development will be made available within a reasonable time period. A separate master plan approval process as described in this division may be utilized only when a proposal is (i) a component of a development project that is the subject of a development agreement between the City of Wilmington and a developer pursuant to North Carolina General Statutes Section 160A-400.20 et seq. ("Development Agreement") or (ii) located within an Large Infill or Redevelopment Priority Area as established in the Future Land Use Plan or the Corridor Plans as adopted.

Plans and other information to accompany petition.

(a) Property may be rezoned to a conditional zoning district only in response to and consistent with a petition submitted by the owners of all of the property to be included in the district. A petition for conditional zoning must include a site plan, drawn to scale, and supporting information and text that specifies the actual use or uses intended for the property and any rules, regulations, and conditions that, in addition to all predetermined ordinance requirements, will govern the development and use of the

property. The following information must be provided:

- (1) A boundary survey and vicinity map showing the property's total acreage, its zoning classification(s), the general location in relation to major streets, railroads, and/or waterways, the date, and north arrow;
 - (2) All existing easements, reservations, and rights-of-way;
 - (3) Approximate location on the site of proposed buildings, structures and other improvements;
 - (4) Approximate dimensions, including height of proposed buildings and other structures;
 - (5) Proposed use of all land and structures, including the number of residential units and the total square footage of any nonresidential development;
 - (6) All yards, buffers, screening, and landscaping required by this chapter or proposed by the petitioner;
 - (7) All existing and proposed points of access to public streets;
 - (8) Delineation of areas within the regulatory floodplain as shown on the official flood hazard boundary maps for the City of Wilmington;
 - (9) Proposed phasing, if any;
 - (10) The location of existing and proposed storm drainage patterns and facilities intended to serve the proposed development;
 - (11) Approximate location of all existing and proposed infrastructure on the site, including water, sewer, roads and pedestrian walkways;
 - (12) Generalized traffic, parking, and circulation plans;
 - (13) Tree survey, if required by this chapter; and
 - (14) Site inventory as required by this chapter.
- (b) Exception to site plan submittal for (i) proposed conditional zoning districts that are components of development projects that are subject to Development Agreement, and (ii) Infill or Redevelopment areas.
- (1) For a proposed conditional zoning district constituting a component of a development project that is the subject of a Development Agreement, or within an Infill or Redevelopment Priority Area as established in the

Future Land Use Plan, the applicant shall submit a master land use conceptual area plan in lieu of a detailed site plan. City Council approval of the master plan shall be required. Conditions from any adopted district, corridor, or area plan, including the Future Land Use Plan shall be adopted as part of the approval where appropriate. The site plan shall be approved by the technical review committee.

(2) Submittal Requirements--Master Plan. The master plan shall consist of the following:

- a. A boundary survey and vicinity map showing the property's total acreage, its zoning classification(s), the general location in relation to major streets, railroads, and/or waterways, the date, and north arrow.
- b. A conceptual land area plan showing the location of all major land use types and the proposed maximum square footage for each use. This may be done in a bubble format showing the general location and relative arrangement of different land uses.
- c. Maximum building heights shall be delineated on the conceptual land area plan.
- d. The plan shall indicate all external access points.
- e. Conceptual internal traffic circulation plan.
- f. The plan shall indicate proposed buffers.
- g. Generalized open space areas and stormwater facilities shall be indicated.
- h. The applicant shall submit a text narrative indicating how the proposed plan conforms to conditions of any adopted area plan, corridor plan, or other long-range plan, including the Future Land Use Plan.
- i. A traffic impact analysis shall be submitted based on the generalized land uses proposed. Maximum trip generation impacts shall be established as part of the plan.

(4) Submittal Requirements--Site Plan. Once the conditional zoning and master plan have been approved, the applicant may submit a site plan for approval in accordance with this chapter. The site plan shall be accompanied by the following information:

- a. The applicant shall submit a text narrative indicating how the proposed site plan conforms to the adopted master plan.
- b. For phased projects, the submitted site plan shall show the generalized location of vehicular and pedestrian accesses to additional phases.

(c) The City Manager has the authority to waive any application requirement where the type of use or scale of proposal makes providing that information unnecessary or impractical.

(d) In the course of evaluating the application, the City Manager, planning commission or City Council may request additional information from the petitioner. This information may include the following:

- (1) Proposed screening, buffers and landscaping over and above that required by these regulations, as well as proposed treatment of any existing natural features;
- (2) Existing and general proposed topography, at four (4) foot contour intervals or less;
- (3) The location of significant trees on the subject property;
- (4) Scale of buildings relative to abutting property;
- (5) Building elevations and exterior features of proposed development;
- (6) Any other information needed to demonstrate compliance with this chapter; and
- (7) Proposed number and location of signs.

(e) The site plan and any supporting text shall constitute part of the petition for all purposes under this division.

Required community meeting before public hearing.

Before a public hearing may be held on a petition for a conditional zoning district, the petitioner must file in the office of the city clerk a written report of at least one (1) community meeting held by the petitioner. The community meeting shall be held prior to the planning commission's consideration of the petition. Written notice of such a meeting shall be given to the property owners and organizations entitled to notice as determined by policies approved by the City Council. The report shall include, among other things, a listing of those persons and organizations contacted about the meeting and the manner and date of contact, the date, time and location of the meeting, a roster of the persons in

attendance at the meeting, a summary of issues discussed at the meeting, and a description of any changes to the rezoning petition made by the petitioner as a result of the meeting. In the event the petitioner has not held at least one (1) meeting pursuant to this subsection, the petitioner shall file a report documenting efforts that were made to arrange such a meeting and stating the reasons such a meeting was not held. The adequacy of a meeting held or report filed pursuant to this section shall be considered by the City Council but shall not be subject to judicial review.

Approval of conditional zoning district.

Conditional zoning district decisions are a legislative process subject to judicial review using the same procedures and standard of review applicable to general use district zoning decisions. In considering any petition for a conditional zoning district, the council shall act in accordance with section 18-120, "Action by City Council." Conditional zoning district decisions shall be made in consideration of identified relevant adopted land use plans for the area, including, but not limited to, comprehensive plans, strategic plans, district plans, area plans, neighborhood plans, corridor plans, and other land-use policy documents.

The City Council 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 City Council 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 City Council taking office, then the public hearing on such petition and any decision on such petition shall both be postponed until after the new City Council takes office.

Conditions to approval of petition.

In approving a petition for the reclassification of property to a conditional zoning district, the planning commission may recommend, and the City Council request, that reasonable and appropriate conditions be attached to approval of the petition. Any such conditions should relate to the relationship of the proposed use to surrounding property, proposed support facilities such as parking areas and driveways, pedestrian and vehicular circulation systems, screening and buffer areas, the timing of development, street and right-of-way improvements, water and sewer improvements, stormwater drainage, the provision of open space, and other matters that the City Council may find appropriate or the petitioner may propose. Such conditions to approval of the petition may include dedication to the city, Cape Fear Public Utility Authority, county or state, as appropriate, of any rights-of-way or easements for streets, water, sewer, or other public utilities necessary to serve the proposed development. The petitioner shall have a reasonable opportunity to consider and respond to any such conditions prior to final action by the

City Council. If for any reason any condition for approval is found to be illegal or invalid or if the applicant should fail to accept any condition following approval, the approval of the site plan for the district shall be null and void and of no effect and proceedings shall be instituted to rezone the property to its previous zoning classification.

Effect of approval.

(a) If a petition for conditional zoning is approved, the development and use of the property shall be governed by the predetermined ordinance requirements applicable to the district's classification, the approved site plan or master plan for the district, and any additional approved rules, regulations, and conditions, all of which shall constitute the zoning regulations for the approved district and are binding on the property as an amendment to these regulations and to the zoning maps.

(b) If a petition is approved, only those uses and structures indicated in the approved petition and site plan or land use area indicated on the master plan shall be allowed on the subject property. A change of location of the structures may be authorized pursuant to section 18-232, alterations to approval. The changes to the site plan layout will not increase the number of structures.

(c) Following the approval of the petition for a conditional zoning district, the subject property shall be identified on the zoning maps by the appropriate district designation. A parallel conditional zoning shall be identified by the same designation as the underlying general district followed by the letters "CD" (for example "RB (CD)").

(d) No permit shall be issued for any development activity within a conditional zoning district except in accordance with the approved petition and site plan for the district.

(e) Any violation of the approved site plan or any rules, regulations and conditions for the district shall be treated the same as any other violation of this Chapter and shall be subject to the same remedies and penalties as any such violation.

Alterations to approval.

Except as provided in subsection (b) below, changes to an approved petition or to the conditions attached to the approved petition shall be treated the same as amendments to these regulations or to the zoning maps and shall be processed in accordance with the procedures in this chapter. Any changes that would be considered major changes under section 18-89 herein shall be subject to this subsection.

(a) The City Manager shall have the delegated authority to approve an administrative amendment to an approved site plan. The City Manager shall have no authority to amend the conditions of approval of a petition. The standard for approving or denying such a requested change shall be that the change does not significantly alter the site plan and that the

change does not have a significant impact upon abutting properties. An administrative amendment shall not be subject to a protest petition pursuant to section 18-121. Any decision must be in writing stating the grounds for approval or denial.

- (b) The City Manager, however, shall always have the discretion to decline to exercise the delegated authority either because he is uncertain about approval of the change pursuant to the standard or because a rezoning petition for a public hearing and City Council consideration is deemed appropriate under the circumstances. If the City Manager declines to exercise this authority, then the applicant can only file a rezoning petition for a public hearing and council decision.
- (c) Any request for an administrative amendment shall be pursuant to a written letter, signed by the property owner, detailing the requested change. Upon request, the applicant must provide any additional information that is requested. Upon an approval of an administrative amendment, the applicant must file a sufficient number of copies of a revised site plan as deemed necessary by the City Manager.

Review of approval of a conditional zoning district.

It is intended that property shall be reclassified to a conditional zoning district only in the event of firm plans to develop the property. Therefore, no sooner than three (3) years after the date of approval of the petition, the planning commission may examine the progress made toward developing the property in accordance with the approved petition and any conditions attached to the approval. If the planning commission determines that progress has not been made in accordance with the approved petition and conditions, the planning commission shall forward to the City Council a report which may recommend that the property be rezoned to its previous zoning classification or to another district.