

# CHAPTER 12. CONDITIONAL REZONING

## SECTION 12.1. PURPOSE AND INTENT

- A.** The purpose of this section is to provide a uniform means for amending the Official Zoning Map to establish a conditional zoning district.
- B.** In cases where the standards of a conventional 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, a landowner may apply for a conditional rezoning.
- C.** The conditional rezoning, if approved, establishes a parallel conditional zoning district that is equivalent to a corresponding conventional zoning district, except as modified through additional conditions that the applicant and County mutually agree are necessary to ensure conformance with adopted plans and to adequately address expected development impacts.
- D.** Parallel conditional zoning districts are restricted to those uses (meaning either one or multiple uses) listed in the corresponding conventional zoning district.
- E.** Only those uses listed (or determined to be equivalent uses) as illustrated on the concept plan or supporting materials as permitted uses and/or conditional uses, in the corresponding zoning district shall be permitted.

## SECTION 12.2. PROCEDURES DISTINGUISHED

Applications filed as a conditional rezoning application may not be converted to a conventional rezoning application during the review process and shall instead be withdrawn and resubmitted as a conventional rezoning application (see Chapter 11).

## SECTION 12.3. DISTRICTS DISTINGUISHED

Following the approval of the application, a conditional zoning district shall be identified on the Official Zoning Map by adding "CZ" to the corresponding conventional district abbreviation, such as "RA-CZ."

## SECTION 12.4. APPLICATION FILING

- A.** Conditional rezoning applications may only be initiated by all the listed landowner(s) of the land subject to the application, or their authorized agents.
- B.** All conditions of approval proposed by the applicant must be included with the conditional zoning application.
- C.** Conditional rezoning applications shall include a concept plan depicting the proposed development configuration that shall be reviewed by County staff prior to consideration by the Planning Board.
- D.** The application for the establishment of a conditional zoning district shall include each of the following items:
  - 1.** A generalized concept plan or site plan prepared in accordance with Chapter 4;
  - 2.** A specification of the actual use(s) and any rules, regulations, or conditions for the proposed district that address the impacts expected to be generated by the development or use of the site;
  - 3.** Proposed phasing, if any, and approximate completion time for the project;
  - 4.** A statement analyzing the reasonableness of the proposed rezoning. The statement shall include, but not be limited to, the following:
    - i.** The size, physical conditions, and other attributes of the area proposed to be rezoned;
    - ii.** The benefits and detriments to the landowners, the neighbors, and the surrounding community;
    - iii.** The relationship between the current actual and permissible development on the tract and adjoining areas and the development that would be permissible under the proposed amendment;
    - iv.** Why the action being requested is in the public interest; and
    - v.** Any changed conditions warranting the amendment.
  - 5.** Applications that include a concept plan shall require subsequent approval of a subdivision and/or site plan as appropriate.

**SECTION 12.5. APPLICATION PROCESS****A. SUBMITTAL**

1. An application for a conditional rezoning may be submitted following completion of a required pre-application conference with the Administrator and a Project Review Team meeting with all departments as determined necessary by the Administrator.
2. The completed application shall be submitted at least 45 days prior to the Planning Board meeting at which it is to be heard.
3. The Planning Department shall have 7 days from the date of submittal to notify the applicant that the application is complete in accordance with Section 10.5.F, Determination of Application Completeness.
4. Complete applications shall undergo technical review, and the Administrator shall prepare and forward the staff report any related application materials to the Planning Board in accordance with Section 10.7, Staff Review and Action.
5. An applicant for a conditional rezoning shall conduct a community meeting (see Chapter 10) prior to initial consideration of the application by the Planning Board.
6. The Administrator shall also provide public notice as appropriate for the type of application in accordance with Section 10.8, Public Notification.

**B. RECOMMENDATION BY PLANNING BOARD**

1. After conclusion of a public meeting, the Planning Board shall make a recommendation on the application in accordance with Section 12.5.D, Review Criteria.
2. In making its recommendation, the Planning Board shall prepare a written statement regarding the application's consistency with the County's Adopted Comprehensive Land Use Plan.
3. During its review of a conditional rezoning application, the Planning Board may suggest revisions to the proposed conditions (including the concept plan), consistent with the provisions of Section 12.6.E, Conditions of Approval. Only those revisions agreed to in writing by the applicant shall be incorporated into the application.

**C. BOARD OF COMMISSIONERS DECISION**

1. After the conclusion of a legislative public hearing, the Board of Commissioners shall decide the rezoning application in accordance with the standards in Section 12.6.D, Review Criteria.
2. The decision shall be one of the following:
  - i. Approval of the application;
  - ii. Denial of the application;
  - iii. Approval of a revised application; or
  - iv. Remand of the application to the Planning Board or Technical Review Committee for further consideration.
3. The decision shall be based on the legislative discretion of the Board of Commissioners, taking into consideration the recommendation of the Planning Board and the standards in Section 12.6.D, Review Criteria.
4. In making its decision, the Board of Commissioners shall adopt a written statement of reasonableness and consistency with the County's Adopted Comprehensive Land Use Plan in accordance with NCGS Section 160D-605.

**D. REVIEW CRITERIA**

The advisability of an amendment to the Official Zoning Map to establish a conditional zoning district is a matter committed to the legislative discretion of the Board of Commissioners and is not controlled by any one factor. In determining whether to adopt or deny a proposed conditional rezoning, the Board of Commissioners may weigh the relevance of and consider the following:

1. Whether the proposed conditional rezoning advances the public health, safety, or welfare;

2. Whether and the extent to which the proposed conditional rezoning is appropriate for its proposed location, and is consistent with the purposes, goals, objectives, and policies of the County's Adopted Comprehensive Land Use Plan;
3. Whether an approval of the conditional rezoning is reasonable and in the public interest;
4. Whether and the extent to which the concept plan associated with the conditional rezoning is consistent with this Ordinance; and
5. Any other factors as the Board of Commissioners may determine to be relevant.

**E. CONDITIONS OF APPROVAL**

1. Only conditions mutually agreed to by the owner(s) of the property that is the subject of a conditional zoning district designation and the Board of Commissioners may be approved as part of a conditional rezoning application establishing a conditional zoning district.
2. Unless subject to an approved condition, all requirements of a corresponding conventional zoning district shall apply to a conditional zoning district.
3. Conditions of approval shall comply with Section 10.10, Conditions of Approval.

**F. DESIGNATION ON FUTURE LAND USE MAP**

In cases where the Board of Commissioners approves a conditional rezoning application they deem to be inconsistent with Adopted Comprehensive Land Use Plan, the future land use map shall be automatically amended with a note referencing the rezoning application approval and no additional request or application for a comprehensive plan amendment shall be required.

**G. EFFECT**

Lands subject to a conditional rezoning shall be subject to all the standards, conditions, and plans approved as part of that application. These standards, plans, and approved conditions are perpetually binding on the land as an amendment to this Ordinance and the Official Zoning Map, and may only be changed in accordance with the procedures established in this Ordinance.

**H. AMENDMENT**

Amendments to a conditional rezoning application approval shall be considered as minor modifications or major modifications, in accordance with the following:

**1. MINOR MODIFICATIONS**

- i. Subsequent plans and permits for development within a conditional zoning district may include minor modifications, provided the development continues to meet the minimum requirements of this Ordinance. Minor modifications are limited to changes that have no material effect on the character of the development or changes that address technical considerations that could not reasonably be anticipated at the time of the conditional rezoning application approval.
- ii. The following minor modifications may be approved by the Administrator if they meet the requirements of this ordinance:
  01. Changes to the location of entrances or driveways, the rearrangement of internal streets, turn lanes, drives, or access restrictions;
  02. Changes to the configuration of parking areas, but not the number of parking spaces;
  03. Changes to the configuration or location of open space or placement of required amenities, provided the amount of open space is unchanged;
  04. Changes to the configuration of non-residential screening, including types of materials, provided minimum width and planting requirements are met;
  05. Changes to the proposed building elevation, including materials, provided that the change retains the same general architectural character and remains consistent with the design parameters established in the approval; and

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**06.** Changes to the arrangement or location of buildings provided the total size of all buildings within the development is not increased by more than 5% of the original approved building area and the impervious surface total does not exceed the allowable total for the location.

**iii.** Nothing shall limit the landowner of an individual lot from seeking approval of a minor modification provided such modification is applied solely to the lot(s) under their ownership and provided the modification is not a major modification.

**iv.** In no instance shall a minor modification include any changes to the range of proposed uses or the overall density of the development.

### 2. MAJOR MODIFICATIONS CONSIDERED AMENDMENTS

**i.** Changes that materially affect the basic configuration of the development, basic parameters of conditions of approval, or that exceed the scope of a minor modification are considered major modifications or amendments.

**ii.** Major modifications include, but are not limited to:

- 01.** Increases in building height;
- 02.** Changes in proposed use types;
- 03.** Changes in size of buildings that increase the approved total area of all buildings by more than 5% or increase impervious surface beyond the allowable limit for the location;
- 04.** Any increase in impervious surface that would require approval of a Special Non-Residential Intensity Allocation;
- 05.** Decreases in open space;
- 06.** Substantial changes in the location of streets (particularly if streets are to be deleted or access points to the development moved so traffic flows both inside and outside the development are affected); and
- 07.** Change in the location of any public easement.

**iii.** Major modifications shall be treated as an amendment that must be reviewed and considered in accordance with the procedures and standards established for the original approval of a conditional rezoning application.

### 3. SITE PLANS FILED FOLLOWING APPROVAL OF A CONCEPT PLAN

Site plans that deviate substantially from a prior-approved concept plan shall be considered a major modification requiring re-review of the associated conditional rezoning application. For the purposes of this section, "substantial deviation" shall include any major modifications identified in subsection (2) above or changes to:

- i.** The number or size of principal buildings;
- ii.** The general placement or arrangement of principal buildings or open space;
- iii.** Landscaping, screening, buffering, or exterior lighting that, in the opinion of the Administrator, will result in increased visibility or auditory impacts on adjacent properties;
- iv.** The location, placement, or configuration of service, loading, refuse facilities that, in the opinion of the Administrator, will result in negative impacts on adjacent properties or public rights-of-way; and
- v.** Any other aspect, that in the opinion of the Administrator, differs from the approved concept plan to a degree that warrants deeper consideration by the Board of County Commissioners.

### I. CHALLENGE TO DECISION

A legislative decision of the Board of Commissioners with regard to a conditional rezoning application may be challenged by the filing of a declaratory judgement action in the Superior Court of Moore County in accordance with Section 14.3, Challenge to Legislative Decision.

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### SECTION 12.7. VIOLATION OF THE TERMS AND CONDITIONS OF A CZ DISTRICT

An approved conditional zoning district and all conditions attached are binding on the property. 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 subdivision or site plan for the district shall be null and void and of no effect and proceedings may be instituted by the County to rezone the property to its previous zoning classification or to another zoning district.

### SECTION 12.7. VIOLATION OF THE TERMS AND CONDITIONS OF A CZ DISTRICT

A violation of the site plan or conditions of a rezoning to a conditional zoning district is a violation of this Ordinance and subject to the enforcement and penalties in Chapter 18.

