

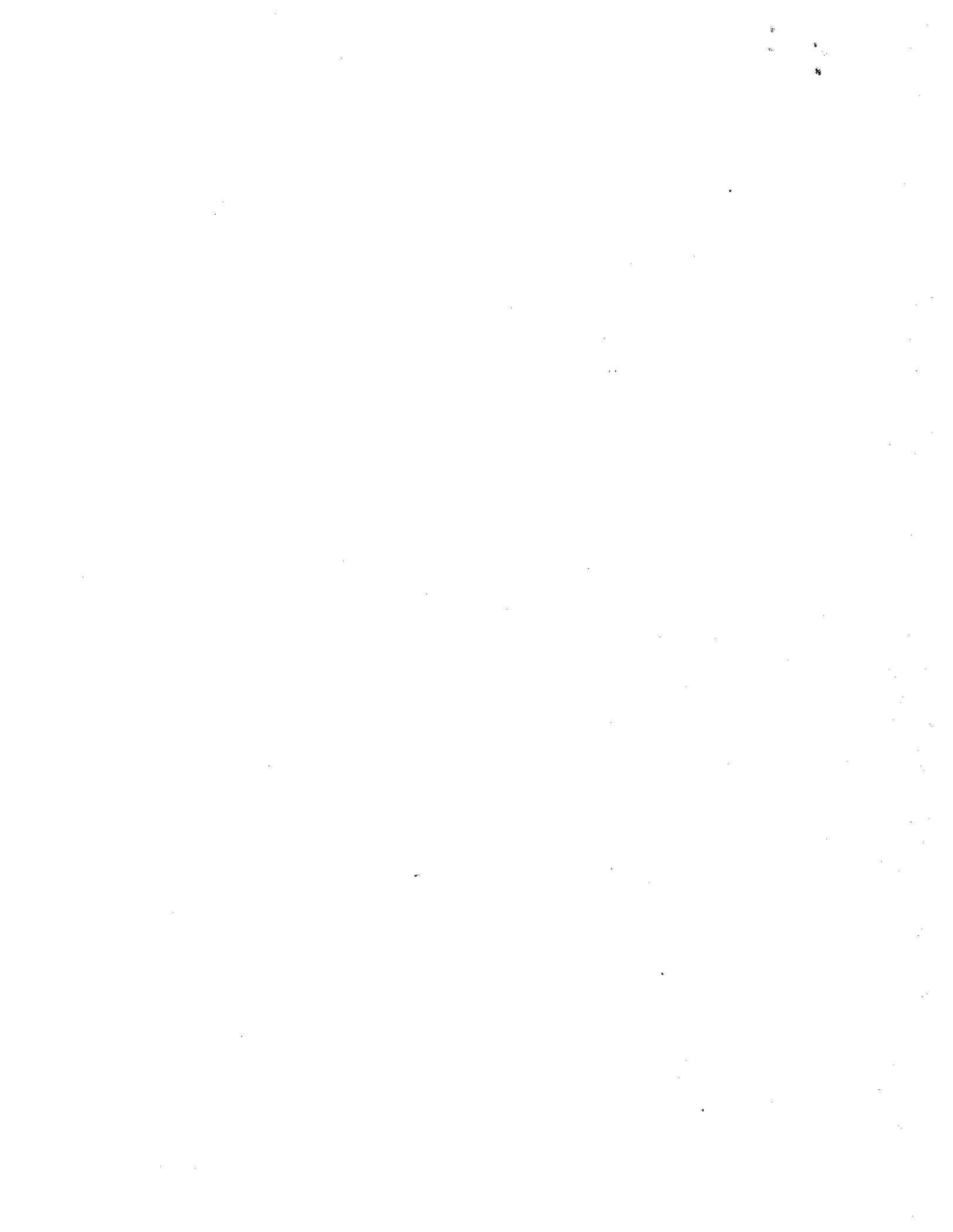
To: Pender County Planning Board  
 From: Patrick T. Davenport, Director  
 Date: August 20, 2008  
 RE: Discussion: Zoning Ordinance revisions- Conditional zoning

Staff has been directed to investigate potential revisions to the County's zoning ordinance regarding conditional zoning. Please find attached NC State Code references, a related article prepared by the NC Coastal Resources Law, Planning and Policy Center and similar regulations from other Counties in NC for background informational purposes. Following are some points for your consideration to frame the discussion:

- Flexibility:
  - Allow applicant to offer or single or minimum number of uses
  - Allow an applicant to offer several uses while identifying other some non-compatible uses
  - Allow an applicant to offer special/additional development standards
- Parallel Conditional Use Districts:
  - Adds a special use permit requirement
  - Specifies what districts are eligible
  - Increased complexity of evaluation
  - New Hanover County
- Conditional Districts
  - More simplified process
  - City of Wilmington
- Need some level of specific plans submitted with projects
- Intended for a specific use/not for speculative purposes
  - Should have expiration date
    - If final zoning not approved:
      - Revert to general use district or-
      - Revoked and return to previous district
- Concerns:
  - Many uses are allowed only by Special Use Permit in Pender County
    - Confusion on application process for a Conditional Use District rezoning requiring a companion Special Use Permit for a use already requiring a Special Use Permit
  - Comprehensive Plan/CAMA plan doesn't address the topic
  - Voluntary
  - Additional process to revise conditions-although use is allowed in general district

Staff is requesting that the Board discuss the conditional zoning regulations and provide staff with input and direction toward possible ordinance revisions. A public hearing at the Board could be held during the October 7<sup>th</sup> meeting. Staff is available for input and recommendations if necessary.

PTD



## **Conditional Zoning in North Carolina**

**Erin Wynia  
N.C. Coastal Resources Law, Planning and Policy Center**

**March 1, 2007**

# Conditional Zoning in North Carolina

Prepared for the N.C. Waterfront Access Study Committee

By Erin Wynia

N.C. Coastal Resources Law, Planning and Policy Center

March 1, 2007

**Definition.** Conditional zoning is a land-use tool that has different meanings in different states. In North Carolina, the practice is authorized by state statute and reaffirmed by court decisions. The statute permits a zoning ordinance to include “conditional districts, in which site plans and individualized development conditions are imposed.”

In practice, conditional zoning occurs “when a governmental body, without committing its own authority, secures a given property owner’s agreement to limit the use of his property to a particular use or to subject his tract to certain restrictions as a pre-condition to any rezoning.” Essentially, conditional zoning allows local governmental units to tailor development when rezoning to a more intensive land use, thus limiting the uses that would ordinarily apply if up-zoned to a general use zone.

In North Carolina, land may only be placed in a conditional zone upon petition by all landowners to be included in the rezoning. Additionally, the enabling statute limits the types of conditions that may be imposed on the new zone to (1) those that address the conformance of the development and use of the site to city or county ordinances and officially adopted plans, and (2) those that address the impacts reasonably expected to be generated from the development or use of the site. Finally, to comply with N.C. statutory provisions, the local planning board must state in writing how the rezoning to a conditional zoning district complies with the municipality’s comprehensive plan, and the deciding body must state its reasons for voting to rezone to a conditional zoning district.

**Advantages.** Conditional zoning arose as a device to counter the rigidity of traditional Euclidean zoning systems, which value uniformity across large zones and separation of land uses over all other considerations. Devices such as variances and special or conditional use permits have long helped local governments ameliorate the rigidity of classic zoning systems, but they only help a local government at the permitting stage, which happens late in the development review process.

Conditional zoning provides an alternative to governments that would rather increase flexibility early in the approval process, at the zoning phase. The conditions agreed to by the petitioning landowner(s) are then legally binding on both the landowner(s) and local government, providing stability for the landowners’ investment interests. Large N.C. municipalities such as Charlotte and Cary now accomplish almost all of their rezonings as acts of conditional zoning.

The practical effect of using conditional zoning is to tailor permitted land use in such a way as to accommodate both the landowner’s interests and neighboring property owners’ interests while still furthering overall public interest in having regulated land uses. Certainly, a local government concerned with loss of public access to its waterfronts could incorporate limitations on the petitioning property owners’ use of the water as a condition of the rezoning, so long as those conditions fit the statutory prescriptions listed above.

Another benefit of *conditional zoning* comes from its advantages over *conditional use district zoning*, a distinct land use practice that is a more complex method of rezoning with restrictive conditions. Conditional use district zoning involves a two-step decision-making process. The first decision a local governmental body makes in this process is to approve a rezoning to a conditional use district that already

exists in the zoning ordinance. Then, the decision-maker must decide whether to approve a landowner's application for a special use permit. While still available as a land use regulatory tool in North Carolina, the codification and judicial affirmation of the conditional zoning practice renders conditional use district zoning a cumbersome, less-favored path toward the same end.

**Critique.** The use of conditional zoning as a tool for preservation of traditional waterfront access presents two significant challenges that may limit its effectiveness. First, because conditional zoning applies *prospectively* to proposed development, it will do nothing to preserve structures, uses, and water access in zones not subject to proposed development. Second, the practice of conditional zoning must follow specific statutory procedures and safeguards so that a local government does not inadvertently engage in *illegal contract zoning* or *illegal spot zoning*. If a local government is found to have engaged in either of those illegal practices, the entire rezoning may be void. Therefore, this second concern deserves more elaboration.

*Contract zoning* is illegal in North Carolina. In the classic (illegal) setting, a landowner and government will enter into a written agreement by which both parties make promises to each other. Generally, the governmental body promises to approve a rezoning if the landowner promises certain concessions such as more parking, open space, or recreational space. Because such an agreement represents a local government bargaining away its police power, the practice is illegal and any decisions of this type are void.

*Spot zoning* is not per se illegal in North Carolina, as is contract zoning. Spot zoning occurs when a small tract of land is rezoned differently than the surrounding areas. Many petitions for conditional zoning also count as instances of spot zoning. The N.C. Supreme Court and N.C. General Statutes allow this practice so long as the rezoning is supported by a reasonable basis. To establish reasonable basis, the local decision-maker must balance several factors, including the size of the tract, the compatibility of the rezoning with an existing comprehensive plan, the benefits and detriments resulting from the rezoning to the landowner, neighbors, and surrounding community, and the relationship between the uses envisioned under the new zoning and the uses currently allowed in adjacent tracts.

Conditional zoning may provide just the tool local governments need to limit land uses more specifically than they could otherwise achieve under general district zoning schemes. Still, the tool requires careful and deliberate decision-making to avoid challenges of illegal contract zoning or illegal spot zoning. The additional procedures attendant to conditional zoning may make the tool more effort than it is worth.

**Implementation issues.** Because conditional zoning is an approved land use tool in North Carolina, a local government will not have to seek further authority to begin using the tool. Yet conditional zoning occupies a "gray area" between legislative decision-making and quasi-judicial decision-making. The delicacy of this "hybrid" form of zoning thus presents challenges to local decision-makers above and beyond traditional rezoning decisions.

Traditional zoning decisions qualify as legislative decisions, and as such, review of those decisions is given high deference. To overturn a legislative decision, a court would have to find the legislative body's decision to be arbitrary and capricious. In practice, this is a high standard for challengers to successfully meet, so the decision usually survives challenge. But because conditional zoning in essence contemplates a rezoning that affects only a small number of landowners, N.C. courts recognize a more individualized, quasi-judicial aspect to the decision. Therefore, upon review, N.C. courts do not view a conditional zoning decision to be presumptively valid as they would traditional rezoning decisions. Instead, the local governmental body bears the burden of proving its action is reasonable.

For that reason, local governmental bodies contemplating a conditional zoning decision must ensure that the decision follows statutory provisions, that a thorough record of the decision is made, and that the decision does not constitute illegal contract or spot zoning as described above. There is great room for error in rezoning to a conditional zoning district, then, and local governmental decision-makers must be aware of the high potential for mistake in this type of rezoning decision.

**Example.** A developer owns six acres of waterfront property in the downtown district of a small coastal N.C. community. The property includes two acres that directly front the river upon which most downtown businesses also operate and two acres that border the main street of the downtown district. One neighboring property owner operates a fish house, while the other neighboring property owner operates a seafood restaurant. The developer's property includes an abandoned warehouse that used to house a boat repair business. The developer wishes to tear down the warehouse and construct six buildings of residential condominiums on the site. Buildings that face the main street would include ground-floor commercial space rather than residences. Each building would reach four stories high, allowing for a total of 80 condominiums. Additionally, the complex would include a small marina for use of condominium owners.

Because the downtown area is currently zoned general commercial, the developer petitions for a rezoning to a conditional zoning district that would allow the mixed-use residential and commercial development to be built. The developer has researched the Town's Comprehensive Plan and knows that the Plan envisions a future of mixed uses along the downtown waterfront, including both residential and commercial uses. Additionally, the developer knows that Town ordinances limit the height of downtown buildings to five stories. The developer feels the proposal adequately reflects the stated land use goals and regulations of the community.

Still, the developer recognizes that for the proposal to win approval, it must include more. Because the new residences would dramatically increase the amount of traffic in the downtown area, the developer proposes on-site parking in a ratio of two spaces per residence. An additional forty spaces are also included in the plans to accommodate traffic due to the new commercial space in the development. And in talks with neighbors, the developer learned that nearby businesses are generally excited about the increased foot traffic the condominium residents would generate. Still, neighbors expressed concerns that the development would cut off a dirt driveway and boat launch area on the east side of the property that residents have used for decades to access the river. To address this concern, the developer has agreed that if approved for the rezoning, the development would include a grant of an easement to the Town for the length of the road and the boat launch area. The developer plans to erect a fence to separate the buildings from this driveway. The fence will extend the length of the dry sand on the riverfront portion of the property as well.

Because this proposal fits with the Town Comprehensive Plan and the conditions to which the developer has agreed (the easement and parking) address the impacts of the project on the surrounding downtown district, this proposal will likely stand as a prime candidate for approval of the conditional zoning district.

**NC STATE CODE REFERENCES**  
**CONDITIONAL ZONING**

**§ 153A-342. Districts; zoning less than entire jurisdiction.**

(a) A county may divide its territorial jurisdiction into districts of any number, shape, and area that it may consider best suited to carry out the purposes of this Part. Within these districts a county may regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings, structures, or land. Such districts may include, but shall not be limited to, general use districts, in which a variety of uses are permissible in accordance with general standards; overlay districts, in which additional requirements are imposed on certain properties within one or more underlying general or **special use districts; special use districts or conditional use districts, in which uses are permitted only upon the issuance of a special use permit or a conditional use permit and conditional zoning districts, in which site plans and individualized development conditions are imposed.**

(b) Property may be placed in a special use district, conditional use district, or conditional district only in response to a petition by the owners of all the property to be included. Specific conditions applicable to the districts may be proposed by the petitioner or the county or its agencies, but only those conditions mutually approved by the county and the petitioner may be incorporated into the zoning regulations or permit requirements. 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 county ordinances and an officially adopted comprehensive or other plan and those that address the impacts reasonably expected to be generated by the development or use of the site.

A statement analyzing the reasonableness of the proposed rezoning shall be prepared for each petition for a rezoning to a special or conditional use district, or a conditional district, or other small-scale rezoning.

(c) Except as authorized by the foregoing, all regulations shall be uniform for each class or kind of building throughout each district, but the regulations in one district may differ from those in other districts.

(d) A county may determine that the public interest does not require that the entire territorial jurisdiction of the county be zoned and may designate one or more portions of that jurisdiction as a zoning area or areas. A zoning area must originally contain at least 640 acres and at least 10 separate tracts of land in separate ownership and may thereafter be expanded by the addition of any amount of territory. A zoning area may be regulated in the same manner as if the entire county were zoned, and the remainder of the county need not be regulated. (1959, c. 1006, s. 1; 1965, c. 194, s. 2; 1973, c. 822, s. 1; 1985, c. 607, s. 3; 2005-426, s. 6(b).)

## Division IV-Conditional Zoning

### **Sec. 18-226. 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 located within a Large Infill or Redevelopment Priority Area as established in the Future Land Use Plan or the Corridor Plans as adopted.

### **Sec. 18-227. 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 Infill or Redevelopment areas.*
- (1) 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.

**Sec. 18-228. 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 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 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.

**Sec. 18-229. 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 Sec. 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.

**Sec. 18-230. 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, 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.

**Sec. 18-231. 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 Sec. 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.

**Sec. 18-232. 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 Sec. 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 Sec. 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.

**Sec. 18-233. 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.

**Secs. 18-234. through 18-245. Reserved.**

**M-2 Heavy Manufacturing District**

The M-2 Heavy Manufacturing District is designed to accommodate all but the most obnoxious industries. However, it is expected that industries permitted here by right will minimize their emission of smoke, dust, fumes, glare noise and vibrations.

**Section 5.1 Conditional Zoning Districts**

There is also established a Conditional Zoning District (CD) which corresponds to each of the districts authorized by this ordinance as follows:

- RA-CD
- RU-R-CD
- R-R-CD
- R-20-CD
- R-12-CD
- R-8-CD
- R-8A-CD
- R-O-CD
- O-I-CD
- N-B-CD
- H-B-CD
- S-C-CD
- C-B-CD
- G-B-CD
- M-1-CD
- M-2-CD

It is recognized that certain types of zoning districts would be inappropriate at certain locations in the absence of special conditions. Where the applicant for rezoning desires property to be rezoned to such a district in such situations, the Conditional Zoning District is a means by which such special conditions can be imposed in the furtherance of the purpose of this Ordinance. The Conditional Zoning District classification will be considered for rezoning only upon request of a property owner or authorized agent.

Within a CD, only those uses authorized as permitted uses in the zoning district with which the CD corresponds shall be permitted, and all other requirements of the corresponding district shall be met as minimum standards. All Conditional Use Districts approved prior to January 15, 2008 shall hereby be replaced by a comparable Conditional District. For instance, a pre-existing GB-CUD designation will be changed to a GB-CD designation, including any associated conditions. All conditions and approvals shall continue to apply; however, changes to that district shall be handled through the conditional district process. Nothing in this section should be interpreted to invalidate any CUD which was legally adopted.

shall have been held on the matter. Notice of public hearing shall be given as required by NCGS 153A, Article 18, Part 3 (Zoning). The Board of Commissioners shall take such lawful action on such amendment applications as it may deem advisable. Failure of the Board of Commissioners to set a public hearing on an amendment application shall constitute denial of that application.

Zoning amendment applications which are initially signed by eighty percent (80%) or more of the owners of all the property involved in the petition shall be placed on the Board of Commissioners agenda for a public hearing on the matter. Notice of public hearing shall be given as required by NCGS 153A, Article 18, Part 3 (Zoning). The Board of Commissioners shall take such lawful action on such amendment applications as it may deem advisable.

### **Section 17.5 Conditional Zoning Districts**

#### **A. Intent**

The conditional zoning districts included herein allow for the consideration of certain uses that, because of their nature or scale, have particular impacts on both the immediate area and the community as a whole and are created or established for selected criteria as indicated in the applicability section below. The development of these uses cannot be predetermined and controlled by general district regulations. In addition, circumstances arise when a general zoning district designation would not be appropriate for a certain property, but specific uses permitted under the district would be consistent with the objectives of this section. To accommodate those situations, this section establishes the conditional zoning district process. A conditional zoning district is not intended for securing speculative zoning for a proposal but rather is based on a firm development proposal.

#### **B. Application**

Except as herein provided, petitions to establish a conditional zoning district must be submitted and will be processed in accordance with the provisions in this Article. Applications shall be submitted on a form provided by Iredell County.

#### **C. Contents of Application**

All applications must include a conceptual site plan, drawn to scale, and supporting text that, if approved, will become part of the amendment. The site plan must include any 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 applicant shall, at a minimum, include each of the items listed below, in addition to the items required in Section 17.2 as amended, and any other applicable sections of this Article. The site plan, including the information detailed below shall constitute part of the petition for rezoning to a conditional zoning district:

1. A vicinity map showing the property's general location in relation to major streets, railroads, and waterways.

2. A drawing of the parcel, including the parcel identification number. If only rezoning a portion of a parcel, a plat must be provided, drawn to scale, showing the bearings and distances of the portion requested.
3. All existing easements, reservations, and rights-of-way on the property(ies) in question.
4. Delineation of areas within the regulatory floodplain as shown on the official Flood Hazard Boundary Maps for Iredell County and delineation of watershed boundaries labeled with their respective classifications and impervious calculations.
5. For residential uses, the number of units and a general outline of the area where the structures will be located. For nonresidential uses, the approximate square footage of all structures and an outline of the area where the structure will be located.
6. Traffic, parking, and circulation plans, showing the proposed locations and arrangement of parking spaces and access points to adjacent streets including typical parking space dimensions and locations along with typical street cross sections. This shall include all existing and proposed points of access to public streets.
7. All proposed setbacks, buffers, screening and landscaping required by this Article and proposed by the petitioner.
8. Generalized information on the number, height, size, and location of structures.
9. The proposed phasing of the project.
10. The proposed number, location, type and size of all signs.
11. The location and description of any outdoor lighting.

#### D. Additional Information

When dealing with the conditional zoning district process, it may be desirable to request additional information in order to evaluate a proposed use and its relationship to the surrounding area. Therefore, the planning director, Planning Board and/or Board of Commissioners may request additional information in addition to that required above, as they deem necessary.

#### E. Public Input Meeting

Before a public meeting may be held on a petition for a conditional zoning district, the applicant must file a written report detailing at least one (1) community meeting held by the applicant. The community meeting shall be held prior to any recommendation by the

Planning staff and prior to the Planning Board's consideration of the request. The following procedures must be met:

1. Based on the perceived impact of the proposal, the affected property owners will be notified by the applicant. Such notice shall be mailed to said property owners not less than ten (10) days prior to the date of the public input meeting and a certification of this mailing shall be submitted as part of the required report. The notice shall contain information regarding the time and location of the public input meeting as well as a description of the proposal.
2. The report shall include, among other things, a listing of the following:
  - a. those persons and organizations contacted about the meeting,
  - b. the manner and date, time and location of the meeting,
  - c. a roster of persons in attendance at the meeting,
  - d. a summary of issues discussed at the meeting, and
  - e. a description of any changes to the rezoning petition as a result of the meeting.

#### F. Review

In evaluating an application for the establishment of a conditional zoning district, it is appropriate for the planning board and board of commissioners to consider the following:

1. Adherence to the general policies and objectives of the adopted land use plan, particularly in relation to the proposed site and surrounding area;
2. The potential impacts on the surrounding area, including but not limited to the absolute certainty the specific use(s), traffic, erosion, land values and the compatibility of land use activities.
3. Spot zoning
  - a. Size of tract;
  - b. Compatibility with adopted plan;
  - c. Public benefits and detriments of proposed rezoning; and
  - d. The relationship between proposed use and current use of adjacent properties.

#### G. Conditions of Approval of Petition

In approving a petition for the reclassification of a piece of property to a conditional zoning district, the planning board may recommend and the board of commissioners may of its own accord require that reasonable and appropriate conditions be attached to approval of the petition. Any such conditions shall be limited to those that address the conformance of the development plan and use of the site to county ordinances and adopted land development plans. Conditions should address the impacts reasonably expected to be generated by the development or use of the site.

The petitioner shall have a reasonable opportunity to consider and respond to any proposed conditions prior to final action by the board of commissioners. Only those conditions mutually agreed upon by board of commissioners and the applicant, with input from the public, may be incorporated into the conditional zoning district.

#### H. Effect of Approval

If a petition for conditional zoning district is approved the development and use of the property shall be governed by:

1. The standards and regulations applicable to the district's zoning classification;
2. The approved site plan for the district;
3. Any additional approved rules, regulations, and conditions, all of which shall constitute the zoning regulations for the approved district; and
4. All general and additional rules, regulations and conditions adopted as part of the conditional zoning district shall be an amendment to these regulations and the Zoning Map.

#### I. Zoning Map Designation

Following approval of the petition for a conditional zoning district, the subject property shall be identified on the Zoning Map by the appropriate district designation followed by the letters "CD" and the case number.

#### J. Determination – Major Change Requiring an Amendment

Before making a determination as to whether a proposed action is an amendment based upon a major change, the planning director shall review the record of the proceedings on the original application for the approval of the conditional zoning district.

1. A change in a specific or general use category shall constitute a new application.

2. The planning director shall use the following criteria in determining whether a proposed change is an amendment constituting a major change to the approved conditional zoning district:
  - a. An increase in intensity of use which means an increase in:
    - i. Usable floor area by more than 10%; or
    - ii. Number of dwelling or lodging units by over 10%; or
    - iii. Outside land area devoted to sales, displays, or demonstrations.
  - b. Any change in use resulting in a more intensive use;
  - c. Any change in parking areas resulting in an increase or reduction of 10% or more in the number of spaces approved by the board of commissioners.
  - d. Structural alterations significantly affecting the basic size, as shown on the approved plan.
  - e. A 10% or more decrease in the amount or location of open space, recreation facilities, or landscape screening.
  - f. Substantial changes in pedestrian or vehicular access or circulation.
3. If the planning director determines that the proposed action requires an amendment, he shall require the applicant to file a request for approval of the amendment, which shall be submitted to the planning board and board of commissioners under the process described in this article.

#### K. Minor Changes and Modifications

The planning director shall have the delegated authority to approve minor changes in the conditional zoning district provided they are in harmony with the action of the board of commissioners. A minor change shall mean:

1. Any change in location or any increase in the size or number of signs.
2. Any change in use resulting in a less intensive use;
3. Increases the intensity of nonresidential development by no more than 10% or 1,000 square feet, whichever is less;
4. Any change(s) that increases the density of residential development by no more than 10%;

5. Any time an applicant agrees to impose standards that are more stringent than those previously approved by the board of commissioners; or
6. All other changes or modifications to the conditional zoning district shall be treated the same as amendments to these regulations or the zoning map and shall be processed in accordance with Section 17.2 of this Article.

L. 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 eighteen (18) months after the date of approval of the petition, the planning director shall examine the progress made toward developing the property in accordance with the approval petition and any conditions attached to the approval. If the planning director determines that progress has not been made in accordance with the approved petition and conditions, the planning director shall forward to the board of commissioners a report which may recommend that the property revert back to the previous zoning classification in accordance with the procedure set out in Section 17.2, as the same may from time to time be amended.

**Section 17.6 Maximum Number of Applications**

In the case where a petition for a change in zoning classification has been denied by the Board of Commissioners after a public hearing, no new petition for the same change of the same property or any part thereof shall be filed within a period of twenty-four (24) months from the date of such decision by the Commissioners; further, no new petition for any other change in the zoning classification of the same property or any part thereof shall be filed within a period of twelve (12) months from the date of such decision by the Commissioners.

In any case where a petition for a change in zoning classification receives an unfavorable recommendation from the Iredell County Planning Board after a public meeting and the petitioner withdraws his application, no new petition for any change in zoning classification of the same property or any part thereof shall be filed within a period of one hundred eighty (180) days immediately following the withdrawal of the petition. However, if in the opinion of the Board of Commissioners, significant changes are made to the facts concerning the request, or specific changes are proposed to meet any concerns or questions posed by the Planning Board, the application may be re-submitted to the Planning Board for their consideration within that time.

Failure of the Board of Commissioners to set a public hearing on a rezoning proposal shall constitute denial of the request.

In no case shall fees charged to submit a rezoning application be refunded.

Nothing in this Section is intended to prevent the submittal of a second application for the same property or any part thereof in any case where the first application is either withdrawn by the

## ARTICLE V. DISTRICT REGULATIONS

### Section 50: Establishment of Use District

50-1: For the purposes of this Ordinance, portions of the unincorporated area of New Hanover County are hereby divided into the following districts:

- (1) R-20S Residential District (12/7/81)
- (2) R-20 Residential District
- (3) R-15 Residential District
- (4) R-10 Residential District
- (5) PD Planned Development District (8/20/84)
- (6) B-1 Business District
- (7) B-2 Business District
- (8) I-1 Industrial District
- (9) I-2 Industrial District
- (10) Shopping Center District
- (11) O & I Office and Institutional District
- (12) AR Airport Residential District (10/4/76)
- (13) AI Airport Industrial District (10/4/76)
- (14) COD Conservation Overlay District (12/1/84)
- (15) RA Rural Agricultural District (07/01/85)
- (16) SHOD Special Highway Overlay District (12/3/86)
- (17) RFMU Riverfront Mixed Use District (3/12/07)

50-2: **Tabulation of Permitted Uses** - Within the various zoning districts as indicated on the Official Zoning Map, New Hanover County, North Carolina,\* and subject to all requirements and conditions specified in this Ordinance; land, buildings, and structures may only be used and buildings and structures may only be erected which are intended or designed to be used for uses listed in the Table of Permitted Uses. In the appropriate columns of the following table, permitted uses in the various districts are indicated by a "P" while uses permitted only as a Special Use subject to the provisions of Section 72 are indicated by an "S". (1/5/81)

**50-3: Conditional Use District Classifications (1/2/90)**

All existing zoning districts, except PD, Planned Development, and SC, Shopping Center, shall also be Commissioners. Each new Conditional Use District is considered a separate zone and is not designated CD, Conditional Use Districts, as established by the County mapped until a Conditional Use District rezoning and Special Use Permit has been issued. All Conditional Use Districts shall be indicated by CD followed by the general zoning district classification, as follows:

**Conditional Use Districts:**

CD(R-20S)	CD(RA)	CD(I-1)
CD(R-20)	CD(B-1)	CD(I-2)
CD(R-15)	CD(B-2)	CD(AR)
CD(R-10)	CD(O&I)	CD(A-I)

## Section 59.7: Conditional Use District (1/2/90)

59.7-1: Purpose - The Conditional Use District procedure is established to address situations where a particular land use would be consistent with the New Hanover County Land Use Plan and the objectives of this ordinance but none of the general zoning district classifications which would allow that use are acceptable.

This procedure is intended primarily for use with transitions between zoning districts of very dissimilar character (e.g. R-15 and B-2) 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 not intended as a routine substitute for the general rezoning procedure, or for frequent use, because creating a large number of such specialized districts can lead to excessive administrative complexity and great difficulty in maintaining consistent and predictable land use policies.

This procedure is intended only for voluntary proposals submitted in the names of the owners of all property included in the petition/ application.

This procedure is intended only for firm development proposals, and shall not be used for tentative projects without definitive plans.

### 59.7-2: Uses and Development Requirements

- (1) Only uses allowed by right or by special Use Permit in the corresponding General Use District are eligible for Conditional Use District consideration and any such use within a Conditional Use District shall, as a minimum requirement, satisfy all the regulations of the corresponding General Use District.
- (2) Within a Conditional Use District, no use is allowed except by Special Use Permit. The Permit may specify additional conditions and requirements which represent greater restrictions on development and use of the tract than the corresponding General Use District regulations, or other limitations on land which may be regulated by state law or local ordinance. Such conditions and requirements shall not specify ownership status, race, religion, character or other exclusionary characteristic of occupant, shall be objective, specific and detailed to the extent necessary to accomplish their purpose, and shall relate rationally to making the Permit compatible with the New Hanover county Land Use Plan, the requirements for a Special Use Permit and other pertinent requirements of the Zoning Ordinance, and to securing the public health, safety, morals, and welfare.

59.7-3: Petition/Application

(1) Who May Submit - Conditional Use District petition / applications may be submitted only by all owners of all real property included in the petition / application.

(2) Content - Each Conditional Use District petition/application shall include a complete Special Use Permit application satisfying the requirements of Article VII, "Provisions for Uses Allowed as Special Uses" and a rezoning petition containing the following general and site plan information for the tract to be rezoned.

(a) Tract boundaries and total area and location of adjoining land parcels and roadways;

(b) Existing zoning of the tract and neighboring parcels and proposed tract zoning;

(c) Proposed use of land, structures and other improvements. For residential uses, this shall include number, height and type of units and site plan outlining area to be occupied by each structure and/or subdivided lot boundaries. For non-residential uses, this shall include approximate square footage and height of each structure, an outline of the area it will occupy and the specific purpose for which it will be used;

(d) Development schedule including proposed phasing;

(e) Traffic and Parking Plan to include a statement of impact concerning local traffic near the tract, proposed right-of-way dedication, plans for access to and from the tract, location, width and right-of-way for internal streets and location, arrangement and access provisions for parking areas; A transportation information sheet is required for any development that will generate more than 100 trips during the peak hour, a traffic impact study may also be required. The study shall be prepared in accordance with Standards and Guidelines approved by the County and shall be submitted at least four weeks prior to the first scheduled meeting of the project's review. (5/02)

(f) All existing and proposed easements, reservations, required setbacks, rights-of-way, buffering and signage;

(g) The one hundred (100) year flood plain line;

(h) Location and sizing of trees required to be protected under Section 67 of the Zoning Ordinance.

(i) Any additional conditions and requirements, which represent greater restrictions on development and use of the tract than the corresponding General Use District regulations, which are the minimum requirements in the Conditional Use District, or other limitations on land which may be regulated by state law or local ordinance.

(j) Any other information that will facilitate review of the proposed change.

(3) Submittal Procedure - Follow the provisions of Section 111-3 of the Zoning Ordinance.

59.7-4: Approval Process

(1) Overview

(a) In all Conditional Use District proceedings, only testimony and other evidence pertinent to the specific use proposed in the petition/application shall be presented.

(b) After the public notice of scheduled hearing before the Planning Board is delivered to the newspapers, no amendments to the additional conditions and requirements specified in the petition/application shall be added which are less restrictive, including but not limited to less setback, more dwelling units, greater height, more access points, new uses and fewer improvements.

(c) No rezoning to a Conditional Use District shall be approved unless all conditions and requirements for the companion Special Use Permit have been included voluntarily by the petitioners, or their authorized representatives. Any condition and site-specific standards imposed shall address the impacts reasonably expected to be generated by the development or use of the site. (2/06/06)

(d) No rezoning to a Conditional Use District shall be approved unless the companion Special Use Permit is also approved for the use or uses specified.

(e) The companion Special Use Permit shall be approved only if the requirements of Article VII, "Provisions for Uses Allowed as Special Uses", Section 59.7-3 and Section 59.7-4(2) are fully satisfied.

(2) Property Owner and Public Notices - Follow the provisions of Section 112-1 of the Zoning Ordinance.

(3) Planning Department Review - Follow the provisions of Section 112-2 of the Zoning Ordinance.

(4) Planning Board Consideration

(a) Follow the provisions of Section 112-3 of the Zoning Ordinance except as indicated below.

(b) Planning Board members may propose additional conditions and requirements beyond those listed in the petition/application. Before the Board votes to recommend approval or denial, the Board Chairman shall permit the petition/application to be withdrawn or amended if so desired by the petitioners or their authorized representatives. If the petitioners desire additional time to consider their course of action, they may request a continuance to the next scheduled public hearing of the Board.

(c) The Board shall document the specific factual findings and analysis leading to its recommendation. A recommendation for approval shall be based on findings that the requirements of Sections 59.7-2 and 59.7-3 have been fully satisfied.

(5) Appeal of Planning Board Recommendations - Follow the provisions of Section 112-4 of the Zoning Ordinance.

(6) Action by the County Commissioners

(a) Follow the provisions of Section 112-5 of the Zoning Ordinance except as indicated below.

(b) One or more Commissioners may propose additional conditions or requirements beyond those contained in the petition/application. Before the Commissioners vote to approve or deny, the Chairman of the Commissioners shall permit the petition/application to be withdrawn or amended if so desired by the petitioners or their authorized representatives. If the petitioners desire additional time to consider their course of action, they may request a continuance.

(c) When the petitioners have exercised or rejected their option to amend their petition/application, it shall be considered for approval or denial as a two-part ordinance amendment. The proposed Conditional Use District rezoning is considered first, then the companion Special Use Permit proposal. If the Conditional Use District is denied, the Special Use Permit is not considered. If both the Conditional Use District and the companion Special Use Permit are approved, the ordinance amendment is adopted. If the Conditional Use District is approved but the Special Use Permit is denied, then the Commissioners shall immediately rescind their approval of the Conditional Use District because failure to do so will create a Conditional Use District without an approved use. Approval shall be based on findings that the requirements of Sections 59.7-2 and 59.7-3 have been fully satisfied.

(7) Effect of Approval

(a) If the petition/application is approved, establishing the Conditional Use District, all conditions attached thereto by the companion Special Use Permit shall be binding on the tract included in the Conditional Use District and all subsequent development and use of the tract shall be in accordance with the approved plan and conditions. No building permit shall be issued for any development within a Conditional Use District except in accordance with an approved Special Use Permit.

(b) If any condition imposed under the companion Special Use Permit is found to be illegal, the approval of both the Special Use Permit and the Conditional Use District shall be null and void, and the tract shall

be rezoned in accordance with the process for map amendment outlined in Section 112.

59.7-5: Alterations to Approved Conditional Use Districts

- (1) Minor changes to an approved Conditional Use District or its companion Special Use Permit shall be considered in the same manner as that used for Special Use Permits as set forth in Section 71-1(9) of the Zoning Ordinance.
- (2) Any request for a change to an approved Conditional Use District that does not qualify as a minor change under the provisions of Section 71-1(9) of the Zoning Ordinance shall be submitted as a new Conditional Use District.

59.7-6: Enforcement

- (1) Failure to Proceed in a Timely Manner - If, within twenty-four (24) months from the date of approval of the Conditional Use District, no building permit has been issued for subject tract, the Planning Department may schedule a hearing for the Planning Board to consider progress made. If determined that active efforts are not proceeding, the Planning Board may send forward a recommendation to the County Commissioners to simultaneously revoke the Special Use Permit and rezone the Conditional Use District to its classification prior to approval. (10/7/91, & 12/3/07).
- (2) Failure to Comply
  - (a) The Inspections Director shall enforce the Conditions and Requirements specified for each Conditional Use District and its companion Special Use Permit following the provisions of Articles X and XIII of the Zoning Ordinance.
  - (b) If a violation of a condition or requirement is not corrected within a reasonable time period, the Inspections Director shall also refer the matter to the Planning Department for initiation of proceedings to simultaneously revoke the Special Use Permit and rezone the Conditional Use District to its classification prior to approval in accordance with the process outlined for map amendment in Section 112. (12/3/07).

**Section 59.8: Water Supply Watershed Overlay District (11/1/93) (4/6/99)**

- 59.8-1: Purpose - The purpose of the Water Supply Watershed Overlay District is to preserve and protect the water quality of the County's surface water supplies from pollution as a result of activities from new construction as well as existing development. The preservation of these potable drinking water supplies is important to the orderly growth of the County and serves to ensure