

- upon receipt of a written request for such extension by the applicant detailing the reasons for delay in completion of the requirements for the Zoning Approval.
- 2) Upon discontinuance of a special use for a period of 6 months, whether continuous or within a one-year period, a special use permit shall be expired.

### **3.5 REZONING**

#### **3.5.1 Applicability**

- A. Amendments to the Zoning Map, also called a “rezoning”, shall be made in accordance with the provisions of this Article.

#### **3.5.2 General Provisions**

- A. Rezoning must correspond with the boundary lines of existing platted lots or tracts. Where the boundaries of a rezoning proposal do not follow a boundary line or a split zoned property line, it must be possible to subdivide and develop that portion of the property outside the proposed rezoning boundary in accordance with the existing zoning and other requirements of this Ordinance.
- B. All zoning district requirements of this Ordinance shall be capable of being met within the boundaries of the area being rezoned. If all of the requirements cannot be met on the site being rezoned, the rezoning shall be expanded to include all property necessary to meet zoning requirements, or it shall be denied.
- C. Rezoning shall be in compliance with the goals and policies of the adopted plans of the County.

#### **3.5.3 Application Eligibility, Procedures, and Requirements**

- A. A request or proposal for a rezoning may be initiated by the County Commissioners, the Board of Adjustment, the Planning Board, the Administrator, the property owner or their agent, or any other party with appropriate owner consent.
- B. Rezoning must correspond with the boundary lines of existing platted lots or tracts. Where the boundaries of a rezoning request do not follow a boundary line or a split zoned property line, it must be possible to subdivide and develop that portion of the property outside the proposed rezoning boundary in accordance with the existing zoning and other requirements of this Ordinance. An illustration containing a metes and bounds description is required. Split zoning a parcel does not imply approval of a Plat.
- C. The applicant shall provide an accurate County parcel number, legal description, or a map drawn to scale showing the property boundaries that are to be rezoned, in sufficient detail for the rezoning to be located on the Official Zoning Map.

### 3.5.4 Plan Consistency Statements

Per G.S. 153A-341 (but not fully reproduced herein),

- A. Rezoning shall be made in accordance with a comprehensive plan.
- B. Prior to adopting or rejecting any zoning amendment, the governing board shall adopt one of the following statements which shall not be subject to judicial review:
  - 1) A statement approving the zoning amendment and its consistency with an adopted comprehensive plan and explaining why the action taken is reasonable and in the public interest.
  - 2) A statement rejecting the zoning amendment and describing its inconsistency with an adopted comprehensive plan and explaining why the action taken is reasonable and in the public interest.
  - 3) A statement approving the zoning amendment and containing at least all of the following:
    - a) A declaration that the approval is also deemed an amendment to the comprehensive plan. The governing board shall not require any additional request or application for amendment to the comprehensive plan.
    - b) An explanation of the change in conditions the governing board took into account in amending the zoning ordinance to meet the development needs of the community.
    - c) Why the action was reasonable and in the public interest.

### 3.5.5 Approval Criteria for Rezoning

The reviewing bodies (Planning Board and Board of Commissioners) shall consider the following matters in deciding a rezoning proposal, in addition to any other considerations as detailed in the specific rezoning application type:

- A. Whether the entire range of uses permitted by the proposed change would be appropriate to the area concerned, including that the proposed rezoning not:
  - 1) be detrimental to the natural environment,
  - 2) adversely affect the health, safety, or welfare of residents or workers in the area,
  - 3) be detrimental to the use or development of adjacent property,
  - 4) materially or adversely affect the character of the general neighborhood, and
  - 5) be reasonable as it relates to the public interest.
- B. Whether adequate public facilities/services (i.e.- water, wastewater, roads, schools, etc.) exist, are planned, or can be reasonably provided to serve the needs of any permitted uses likely to be constructed as a result of such change;
- C. Whether the proposed change is consistent with the County's Comprehensive Land Use Plan, CAMA Land Use Plan, and any other adopted land use document.

### **3.5.6 Withdrawal of Rezoning Application**

- A. An applicant may withdraw a rezoning application at any time, by filing a statement of withdrawal with the Administrator. Any fees paid up to that point are nonrefundable.
- B. The statement of withdrawal shall be signed by all persons who signed the application, or in the event of death or incompetence, by the estate's lawful personal representative.

### **Resubmission of Application**

- A. Upon final action by the County Commissioners to deny or approve an application for the rezoning of a piece of property, the Planning Board shall not review any applications for changes affecting the same property or any portion thereof until the expiration of six (6) months from the date of such previous action except as provided as follows:
- B. A resubmission of a rezoning petition may be allowed within the six month period if the County Commissioners vote to waive the restriction by a one hundred (100) percent affirmative vote of a quorum. The County Commissioners shall consider the following in determining a resubmission within this time period:
  - 1) There has been a significant change in the zoning district classification of an adjoining piece of property.
  - 2) The County has adopted a plan that changes public policy regarding how the property affected by the amendment should be developed.
  - 3) Construction or expansion of a road, water line, sewer line, or other such facilities has occurred to serve the property and can comfortably accommodate the intensity of development allowed under the proposed classification.
  - 4) There has been some other extraordinary change in conditions or circumstances, outside the control of the petitioner, which justifies waiver of the six month restriction on a new position; this, however, shall not include a change in the ownership of the subject property.

### **3.5.7 Period of Validity**

An approved rezoning shall run with the property and shall be valid until the Official Zoning Map for that property is subsequently amended.

### **3.5.8 Types of Rezoning**

- A. General Use District Rezoning
  - 1) A general use district rezoning seeks to recategorize a property into one of the general use (aka "standard" or "base") zoning districts. Consultation
  - 2) Review

- a) Action by Administrator
  - i) Once in receipt of a complete and sufficient application, the Administrator shall prepare a staff report that reviews the rezoning proposal in light of any applicable plans and the general requirements of this Ordinance. The staff report shall consider the entire range of permitted uses in the requested classification regardless of any representations made that the use will be limited.
  - ii) Following completion of the review by staff, the Administrator shall forward the completed proposal, staff recommendation, and any related materials to the Planning Board for review and recommendation.
  - iii) Following Planning Board review and recommendation, the Administrator shall forward the completed rezoning proposal and any related materials, including the staff and Planning Board recommendation, to the County Commissioners for hearing and final action.
- b) Action by Planning Board
  - i) Before making any recommendation on a rezoning proposal, the Planning Board shall consider any recommendations from the Administrator and shall conduct a public hearing where interested parties may be heard.
  - ii) The Planning Board shall make a recommendation based on the Approval Criteria listed in this Section.
  - iii) Following Planning Board review and recommendation, the application, Planning Board recommendation, staff recommendation, and any related materials shall be forwarded to the County Commissioners.
  - iv) If the Planning Board fails to make a recommendation within 75 days following the date of the first hearing on the proposal, the proposal shall proceed to the County Commissioners without a recommendation.
  - v) Per G.S. 153A-341, Prior to consideration by the governing board of the proposed zoning amendment, the Planning Board shall advise and comment on whether the proposed amendment is consistent with any comprehensive plan. The planning board shall provide a written recommendation to the governing board that addresses plan consistency and other matters as deemed appropriate by the planning board, but a comment by the planning board that a proposed amendment is inconsistent with the comprehensive plan shall not preclude consideration or approval of the proposed amendment by the governing board.
- c) Action by County Commissioners
  - i) Before making any decision on a rezoning proposal, the County Commissioners shall consider any recommendations from the Planning Board

and Administrator and shall conduct a public hearing where interested parties may be heard.

- ii) The County Commissioners shall take action on a rezoning proposal based on the Approval Criteria, and other materials of the public record.
- iii) The County Commissioners may approve the rezoning, deny the rezoning, or send the rezoning back to the Planning Board for additional consideration.

3) Review Approval Criteria for Rezoning

The Approval Criteria for a Rezoning shall be considered by the reviewing bodies (Section 3.5).

B. CONDITIONAL REZONING

1) Intent

A conditional zoning district (aka "CZ") is intended for a development that has a high level of certainty of being constructed and the most commonly expected application will contain a specified use or uses, permitted by right or special use, accompanied by a plan showing proof of concept and typically including the spatial relation of uses and site elements.

2) Application requirements

- a) Except as provided herein, all applications to establish a conditional zoning district shall adhere to the regulations and procedures prescribed in this subsection in addition to the standard general use district rezoning process as described in this Section.
- b) Contents of Application – at a minimum, the following (and a description) shall be required for a conditional zoning district to be considered:
  - i) A list of all uses proposed for the district, which shall be of equal descriptiveness and in the same format and description as listed in the Table of Permitted Uses from this Ordinance.
  - ii) A list of all setbacks and dimensional standards for every proposed use, which shall be of equal descriptiveness and in the same format and description as listed in the Zoning District Dimensional Requirements, from this Ordinance.
  - iii) A sketch plan drawn to a suitable scale, with supporting information and text which specifies the location of the use or uses intended for the property and any development or dimensional standards to be approved as part of the establishment of the conditional rezoning district.
  - iv) The sketch plan shall include the following items:

- i. Delineation of all Areas of Environmental Concern and Resource Conservation Areas including but not limited to federal jurisdictional wetlands.
  - ii. For residential uses, the number of units, heights and a generalized location.
  - iii. For non-residential uses, the height, approximate footprint and location of all structures.
  - iv. Traffic generation calculations and/or Traffic Impact Analysis if required by this Ordinance, parking and circulation plans illustrating dimensions, intersections, and typical cross sections
  - v. All proposed setbacks, buffers, screening and landscaping
  - vi. Phasing
  - vii. Signage
  - viii. Outdoor lighting
  - ix. Current zoning district designation and current land use status
  - x. Other information deemed necessary by the Administrator, Planning Board, or Board of Commissioners, including but not limited to a Traffic Impact Analysis or other report from a subject matter expert
- c) Public Input Meeting
- i) Prior to scheduling a public hearing on the rezoning application, the applicant must conduct one public input meeting and file a report of the results with the Administrator, per Section 3.2, Common Review Procedures.
- 3) Review Approval Criteria for Conditional Rezoning
- a) When evaluating an application for the establishment of a conditional zoning district, the reviewing bodies shall consider the following:
    - i) The Approval Criteria for a Rezoning (Section 3.5).
    - ii) That the application meets the intent of a conditional rezoning, per this subsection.
    - iii) That the contents of the application are complete, sufficient, and recorded appropriately either as conditions of approval or on the associated site plan or preliminary plat, and that the appropriate procedures have been followed.
    - iv) The potential impacts and/or benefits on the surrounding area and adjoining properties.

- v) The report of results from the public input meeting.
  - vi) That sufficient guarantee is in place or can be made that any off-site impacts generated by the proposed project shall be mitigated appropriately at the time the need for the mitigating action is generated.
- 4) Conditions to Approval of Petition
- a) In approving a petition for the reclassification of property to a conditional zoning district, the Administrator or the Planning Board may recommend, and the Board of County Commissioners' request that the applicant add reasonable and appropriate conditions to the approval of the petition. If the applicant and the BOCC do not both explicitly accept these conditions, then the BOCC shall deny the conditional rezoning request.
  - b) Any such conditions should relate to the relationship of the proposed use(s) and design to the impact on County services and capital plans adopted, surrounding properties and population, proposed support or accessory 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 or access to open space, and other matters that the participants in the public input meeting, staff, Planning Board and County Commission find appropriate, or that the petitioner may propose. Such conditions to approval of the petition may include, but are not necessarily limited to, right-of-way dedication to the state, as appropriate, of any rights-of-way or easements for streets, water, sewer, or other public utilities necessary to serve the proposed development.

**Commentary:** For instance, a condition of approval might state that off-site traffic mitigating measures must be installed prior to impacts to the surrounding transportation network.

- c) The petitioner shall consider and respond to any such conditions after the Planning Board meeting at least three (3) days prior to the staff report for the County Commission being published. If the applicant does not agree with the Planning Board or staff's recommendations of additional conditions, the applicant shall provide written evidence or opinion to support their objection.
- d) If for any reason any condition for approval is found to be illegal or invalid or if the applicant or subsequent owner should fail to accept or fulfill any condition following approval, the approval of any site plan or preliminary plat for the district and the conditional rezoning shall be null and void and of no effect and proceedings shall be instituted by the Administrator to rezone the property to a context-appropriate general use district zoning classification. The Administrator will use appropriate judgement when recommending which properties

(developed, undeveloped, vacant, half-built, existing non-conformities, etc.) be reassigned to which general use zoning districts. The rezoning may result in the creation of nonconformities, which shall be the responsibility of the property owner to rectify at such time as required by Article 10, Nonconformities.

5) Effect of Approval

- a) Once a conditional rezoning is approved, the development and use of the property shall be governed by the established standards for the district, the approved sketch 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) Following the approval of the petition for a conditional zoning district, the subject property shall be identified on the zoning maps by the district designation "CZ" and a unique, consecutive numerical identifier (for example, the fifteenth conditional zoning district established in the county would be labeled "CZ15"). The unique identifier number will reference the approved ordinance and sketch plan that established the zoning district.
- c) Since each CZ district represents a newly created zoning district, the approved sketch plan and district standards and conditions shall be maintained as an adopted appendix to this Ordinance.
- d) The approved sketch plan, may substitute for an approved master development plan if it is explicitly reviewed and approved as such during the petition for the CZ district.
- e) No permit shall be issued for any development activity within a conditional zoning district except in accordance with the approved petition and site plan or preliminary plat (as appropriate) for the district.
- f) 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.

6) Alterations to Approval

- a) Except as provided in subsection 2 below, changes to an approved conditional zoning district or to the standards, uses, requirements, or conditions attached to the approved conditional zoning district shall be treated the same as amendments to this Ordinance or to the zoning maps and shall be processed as a Conditional Rezoning, unless possible to modify as an Administrative Adjustment.



- i) The Administrator shall have the delegated authority to approve an Administrative Adjustment per Sec 3.11.
  - ii) The Administrator may decide to decline to exercise the delegated authority either because of uncertainty about approval of the change pursuant to the standard or because a rezoning petition for a public hearing and County Commission consideration is deemed appropriate under the circumstances. If the Administrator declines to exercise this authority, then the property owner may choose to amend the conditional zoning district by filing a new rezoning or land development request.
- 7) Review of Approval of a Conditional Zoning District
- a) 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 Administrator shall examine the progress made toward developing the property in accordance with the approved conditional zoning district and any standards, uses, requirements, or conditions attached to the approval.
  - b) If the Administrator determines that progress has not been made in accordance with the approved petition and conditions, the Administrator shall begin proceedings to rezone the property(ies) to its previous zoning classification or to another district(s), as appropriate.
  - c) The Administrator shall continue to monitor conditional zoning districts in this manner at least every 2 years, until they are determined to be substantially built-out (90% or more of units, square feet, or land built out).

### 3.6 MASTER DEVELOPMENT PLAN

#### 3.6.1 Intent

The MDP shall be used to generally illustrate the characteristics of the property proposed for development and of surrounding properties.

#### 3.6.2 Definitions for this subsection:

***Preliminarily vested*** – entitlement to the general layout and permitted uses (but not special uses) depicted in a Sketch Plan and otherwise allowed by the underlying zoning districts. Preliminarily vesting does not permit or otherwise allow any development activity, land disturbance, or platting.

Lot area or lot size refers to the entire horizontal land area inside the lots lines or site. Public/private right-of-way or areas within public prescriptive right-of-way shall not be included when calculating area of a lot.

- 1) Minimum lot size calculation
  - a) All lots must meet the minimum lot size specified in Table 4.10, Zoning District Dimensional Requirements which may also be modified via Section 7.15, Incentives for Excellence in Development and Subdivision Design, per the following calculation:

**Lot size = [area not within the 100- or 500-year floodplain] + ( [area within the 100-year floodplain] X 0.25 ) + ( [area within the 500-year floodplain] X 0.50 )**

- b) No more than 50% of the required minimum lot size may be located within the 1% annual chance floodplain (aka the 100-year floodplain).

#### 4.2.5 Density

##### A. Number of Allowable Dwelling Units (Density)

- 1) Determination – The maximum number of dwelling units allowable on a particular tract of land is calculated in a two-step process that sums 100% of the maximum allowable density of site area not within resource conservation areas with the density that is allowed on land that is considered resource conservation area. The maximum allowable density for the resource conservation areas is 50% less than the maximum density for the zoning district. The maximum allowable density for resource conservation areas is 50% less than the maximum density for the zoning district.

**Max. dwelling units = ( [max. zoning district density] X [acres not in resource conservation areas]) + ( [max. zoning district density] X [acres in resource conservation areas] X 0.50 )**

- 2) The minimum allowable dwelling units for any legal, conforming parcel of land is 1 single family dwelling, if permitted by the zoning district.
- 3) Any calculation of density for a given parcel of land, regardless of amount, shall not permit the violation of any other standards of this Ordinance.

##### B. Density Transfer

- 1) In any instance where a particular development is located in more than one district the density shall be separately computed for each district and no density may be transferred between districts.
- 2) In any instance where a collector street as identified by an adopted Collector Street or other Transportation Plan on a parcel and certified to be constructed in accordance with that plan and all applicable sections of this Ordinance, the

acreage within the collector street's right-of-way shall be added back into the density calculation for determining maximum dwelling units.

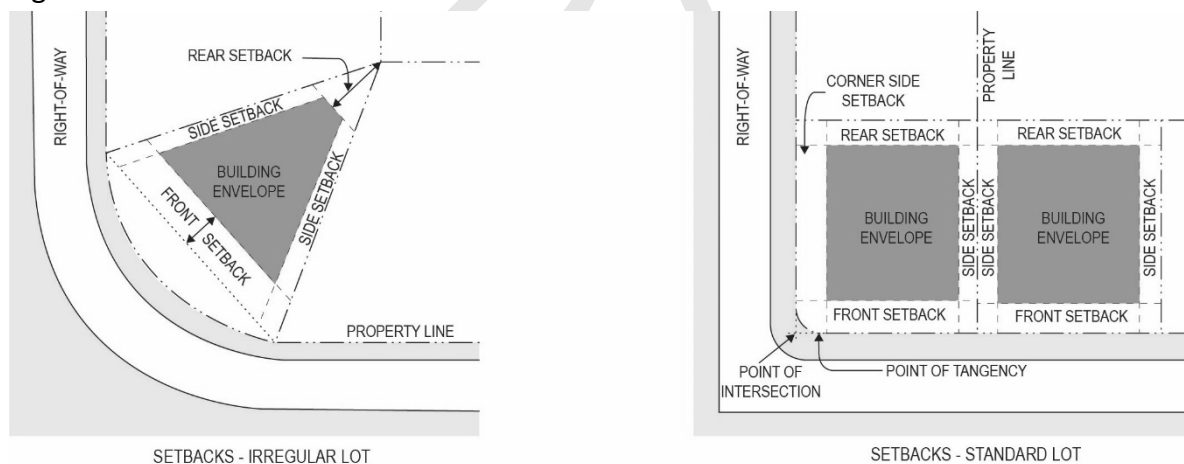
#### 4.2.6 Yards

- A. No part of a required yard setback shall contain any structures or obstructions, except as allowed in this Ordinance.
- B. No yard shall be reduced below the minimum dimensions required by this Ordinance except in accordance with Article 10, Nonconformities.

#### 4.2.7 Measurement of Yards and Setbacks

- A. The depth of a required yard (also commonly referred to as a "setback") shall be measured at right angles to a straight line joining the foremost points of the side (bordering) lot lines. The foremost point of the side (bordering) lot lines, in the case of rounded property corners at street intersections, shall be the point of tangency of the lot lines. For lots on cul-de-sac's, the nearest point of the right-of-way shall be the point of measurement, where appropriate.
- B. The inner edge of the required side yard is parallel to the side lot line.
- C. The inner edge of the required rear yard is parallel to the rear lot line.
- D. Setbacks regulate the placement of the outside walls of a structure and have no direct influence on projections (roof overhangs, eaves, etc.) from the structure.

Figure 4.6: Setbacks illustrated



#### 4.2.8 Permitted Obstruction in Required Yards

In all districts, the following shall not be considered obstructions when located within a required yard, except that these items shall not be located within any required clear site triangle and shall not be permitted to cross any property line or encroach into any easement where they are otherwise prohibited. Obstructions shall not be allowed in any right-of-way for a stub-street or future street extension or connection.