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MEMORANDUM

TO: Rowan County Board of Commissioners
FROM: Shane Stewart
DATE: March 25, 2022
RE: **ZTA 02-22: Conditional Districts**

SUGGESTED BOARD OF COMMISSIONERS ACTION

- ☐ Schedule Public Hearing for **ZTA 02-22** for April 18, 2022

BACKGROUND

Over the past decade or more, generally half of all rezoning requests received have been for a conditional district (CD); a trend that will likely continue. These districts serve as a necessary approach in rezoning property that offer additional clarity on permitted development in the district through submission of a site plan and other details, which allow an appropriate evaluation of the request. One challenge with a CD request relate to the required process to consider plan changes that may arise after the rezoning. Current language includes three (3) variables that may be used by Planning Staff to guide a decision into whether a proposed variation in plan detail would be required to repeat the original rezoning process.

Staff have proposed additional guidance for minor change decisions and the elimination of waiting periods where amendments may be requested, the latter of which was rarely used. Revocation language is proposed for removal, which was historically consistent with that for special use permits (quasi-judicial decisions), but not as relevant in legislative decisions. New language is provided indicating the same two (2) year duration to obtain permits for development within the CD but would not “expire” unless a subsequent rezoning was initiated by staff.

Lastly, section 21-11 currently include general reference to a development agreement in a list of protected rights secured establishing protection from subsequent ordinance amendments. Subsection (d) of 21-11 would recognize a fourth category in this section that may extend the vesting period for certain projects. Although the Board of

Commissioners could currently enter into a Development Agreement, which extend a development's vesting period beyond that currently noted in 21-11 without this language, this section is intended to recognize this option for additional clarity.

**PLANNING
STAFF REQUEST**

Planning staff is requesting an amendment to the Zoning Ordinance regarding conditional districts specifically noted in sections 21-62 through 63 and reference to a development agreement with supporting North Carolina General Statute reference in section 21-11.

Existing text proposed for deletion appear ~~highlighted with strikethroughs~~ while new text appear as **bold red text**.

Chapter 21: ZONING ORDINANCE

Article I. In General

Sec. 21-1. Title.

Sec. 21-2. Purpose.

Sec. 21-3. Authority.

Sec. 21-4. Definitions.

Sec. 21-5. Jurisdiction.

Sec. 21-6. Bona fide farms exempt.

Sec. 21-7. Severability.

Sec. 21-8. Abrogation.

Sec. 21-9. Use or sale of land or buildings except in conformity with chapter provisions.

Sec. 21-10. Relationship to other ordinances.

Sec. 21-11. Permit choice, vested rights, ~~and~~ site-specific vesting plans, **and development agreements**.

Sec. 21-11. Permit choice, vested rights, ~~and~~ site-specific vesting plans, **and development agreements**.

Pursuant to G.S. 143-755, 160D-108, ~~and~~ 160D-108.1, **and Article 10 of 160D** provisions to secure a permit choice, vested right, ~~or~~ site-specific vesting plan, **or development agreement** shall be as follows:

(a) *Permit choice.*

(b) *Vested rights.*

(c) *Site-specific vesting plans.*

(d) Development Agreements. Properties subject to an approved development agreement with the Board of Commissioners consistent with Article 10 of G.S. 160D may have vesting periods which exceed durations identified in this subsection.

Sec. 21-61. Conditional districts.

(a) *Purpose.* There are instances where ~~certain uses may have significant impacts on the surrounding area and the county which cannot be predetermined and controlled by general district standards. As a result, a general zoning district designation is clearly inappropriate for a property, but a specific use or uses~~

permitted as a conditional district subject to development requirements to address the anticipated impacts would be consistent with the spirit and intent of this chapter. **a rezoning request to a general district would be inappropriate and could not effectively be managed by the district's general development standards. As an alternative manner to evaluate those requests, a specific set of development standards are necessary to address anticipated impacts on surrounding properties and the county, determine consistency with adopted plans, and / or provide a clear understanding of the type and degree of future development allowed within the district. This can often be achieved by the commitment to a specific use or uses permitted in the district, increased development standards, or site plan details, which are tailored to address the aforementioned objectives and sufficient to allow for an appropriate evaluation of the request.** This voluntary procedure must be petitioned by the property owner or their authorized agent as a **firm** development proposal and not for securing early zoning for tentative uses which may not be undertaken for a long period of time.

<i>General Zoning Districts</i>	<i>Conditional Districts</i>
RS	RS (CD)
RR	RR (CD)
RA	RA (CD)
MHP	MHP (CD)
MFR	MFR (CD)
CBI	CBI (CD)
85-ED-1	85-ED-1 (CD)
85-ED-2	85-ED-2 (CD)
85-ED-3	85-ED-3 (CD)
85-ED-4	85-ED-4 (CD)
IND	IND (CD)
NB	NB (CD)
INST	INST (CD)

(b) *Applications.* Applications for conditional districts shall be on forms provided by the county planning and development department. Only property owners or their authorized agents shall apply for rezoning to an appropriate conditional district (amended 6-19-00). **In addition to the general information required in section 21-52 and other applicable sections of this chapter, the petitioner may propose additional limitations or restrictions to ensure compatibility between the development and the surrounding area. The applicant may propose additional limitations or restrictions that address: compatibility between the development and surrounding area; anticipated impacts; land use plan objectives; or other concerns. Supporting documentation must clearly identify proposed restrictions or conditions that exceed general district standards and govern future development within the district.** Only uses listed in section 21-113 as permitted by right **or as a CD** may **and as a CD** be considered within a conditional

district.

Applications must include a site plan containing information from section 21-52 including the general location and size of buildings, proposed streets, parking areas, and other operational area improvements. While the applicant has discretion in the information submitted, the application must contain an appropriate level of detail or necessary conditions to adequately govern the district, as determined by the board of commissioners. The applicant must consider the potential degree of administrative change afforded to approved districts in section 21-62(d) when submitting plans for consideration.

(c) *Permitted uses and development requirements.* ~~Upon approval of~~ **If approved as** a conditional district, only the use or uses identified in the conditional district are allowed subject to any associated conditions or limitations therein. All use requirements of the underlying general use district **and section 21-64, if applicable,** shall apply as well as all other requirements of the ordinance. In no situation shall approval of a conditional district reduce required standards of this ordinance unless otherwise provided herein.

(d) *Review Procedures.* Conditional district requests shall follow review procedures referenced in Sec. 21-362.

(e) *Conditional District Approval.* The board of commissioners may approve a reclassification of a property to a conditional district only upon determining that the proposed use or uses will meet all standards and regulations in this chapter that are applicable. Specific conditions applicable to the districts may be proposed by the petitioner or the board of commissioners, but only those conditions consented by the petitioner in writing consistent with G.S. 160D-703(b) may be incorporated into the zoning regulations. 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 applicable ordinances, officially adopted comprehensive plans, or impacts reasonably expected to be generated by the development or use of the site.

The approval of the district and any requested conditions shall be included on ~~an~~ **a certificate of approval** form provided by the county. If the approval and any attached conditions are acceptable to the petitioner, then this acceptance shall be indicated by the petitioner signing the approval form.

(Ord. of 1-19-98, § IV; Ord. of 6-17-02; Amend. of 3-7-05; Amend. of 2-20-06(1); Amend. of 6-16-08; Amend. of 6-19-10; Amend. of 3-5-12; Amend. of 9-6-16; Amend. of 6-21-21)

Sec. 21-62. Effect of approval for conditional districts.

(a) *Conditions attached to approval.* Approval of a conditional district and the attached conditions are binding on the property as an amendment to the zoning maps. All subsequent development and use of the property shall be in accordance with the standards for the approved conditional district, the approved rezoning request, and all conditions attached to the **certificate of approval**. ~~In accordance with Sec. 21-11(c), an approved conditional district secures a vested right to undertake a project for two (2) years unless a longer duration is requested by the applicant and approved by the Board of Commissioners.~~

- (b) *Uses allowed.* Only uses and **structures development** indicated **on within** the approved **site plan conditional district** shall be allowed on the subject property. All uses and structures in a conditional district shall also comply with all standards and requirements for development in the underlying zoning district.
- (c) *Effect on zoning maps.* Following approval of the rezoning request for a conditional district, the subject property shall be identified on the zoning map by the appropriate district designation as listed in section 21-61 (a). All parallel conditional use districts approved prior to September 6, 2016 shall hereby be replaced by a comparable conditional district. For example, a pre-existing CBI-CUD designation will be changed to a CBI-CD designation. Associated applications, site plans, conditions, and limitations placed on the conditional use district are incorporated without change into the standards and conditions for the new conditional district. Changes to a pre-existing conditional use district are subject to the conditional district process identified in subsection (d). Nothing in the section shall be interpreted to invalidate a pre-existing conditional use district.
- (d) *Alterations to approval.* Alterations to an approved plan for a conditional district shall be as provided in this subsection.
- (1) Except as provided in subsection (2) below, changes to the approved conditional district and maps shall be treated as amendments to this chapter and the zoning maps.
- (2) Minor changes.
- a. The county recognizes slight deviations in **site-specific development proposals plans** may arise **from circumstances that could not reasonably be anticipated during the rezoning, warranting which may warrant** changes to the plans and therefore offers a provision for administrative approval of a minor change. The applicant may submit a written request to the planning director that includes supporting documentation (e.g. federal / state permits, survey / engineering information, **water or sewer permits, soil suitability**) substantiating the need for the minor change. After reviewing the record of proceedings, the planning director may consider minor changes that are substantially similar to that approved by the Board of Commissioners **except in instances where reliance was made on an adopted development condition identified on the certificate of approval. Additionally, subject to** the following criteria **shall be used as a guide in evaluating a minor change request:**
1. Relocation of operational area improvements that do not project into the **required adopted conditional district setback for the respective operational element;**
 2. **Reduced setback by no more than ten (10) percent of that identified on the plan for the respective operational area improvement provided compliance with the corresponding general district setback;**
 3. **Increase in total gross floor area by no more than ten (10) percent of the area on the approved plan provided the size complies with the corresponding general district and / or overlay district allowance;**
 4. **Change in driveway location along the same road provided the location**

complies with NCDOT standards;

5. Structural alterations that do not significantly effect the basic style, ornamentation, and / or character of the building; **or**
 6. Change in detail which does not affect the basic relationship of the use to the required standards of the applicable ordinances or condition(s) of approval; **or**
 7. **Any change that impose standards which are greater than the conditional district.**
- b. Regardless of Sec. 21-62(d)(2)(a)(1-3), the planning director may **forward the requested change to the Board of Commissioners for consideration** **require the applicant to submit a new application** in the same procedure as required for the original issuance of the conditional district as per Sec. 21-61(b). **All Additionally, all** other changes shall be reviewed **by the Board of Commissioners** as per Sec. 21-61(b). Modifications requesting reduction of the minimum standards within the zoning ordinance shall be treated as a variance request and not considered herein.
- c. ~~Requests for a minor change may be submitted to the planning director at any time, although proposals to change or amend any approved conditional district shall not be considered by the Board of Commissioners within one (1) year after date of original authorization of such permit or within one (1) year after hearing of any previous proposal to amend or change the district unless deemed appropriate by the planning director. Applicants of amendment proposals to the Board of Commissioners within the one (1) year period denied by the planning director may request referral to the Board. Failure of the Board of Commissioners to schedule a legislative hearing regarding an amendment shall constitute denial of the request and conditions of the original district shall remain in effect.~~
- d. ~~The Board of Commissioners may consider revocation of an approved conditional district through the same procedure as the original permit. Following the hearing, the Board of Commissioners may elect to revoke the district if it is factually determined that one or more instances listed below have occurred:~~
- ~~(1) Substantial departure from the approved application, plans, or specifications;~~
 - ~~(2) Refusal or failure to comply with the requirements of any applicable local development regulation;~~
 - ~~(3) False statements or misrepresentations made in securing the approval;~~
~~or~~
 - ~~(4) Mistakenly issued in violation of an applicable State or local law.~~
- ~~Failure to validate at least one of these instances shall allow the conditional district to remain valid. Petitioners may appeal this decision to superior court. Should a conditional district be revoked, the Board of Commissioners will rezone the property back to a general zoning district.~~

(e) **Expiration.** If a zoning permit is not issued for development allowed in the conditional district within two (2) years of district approval or within a longer duration established by section 21-11, the Planning Director may review efforts made and / or continued interest in the proposed development with the property owner or developer. If it is apparent that development within the district may not occur for a long period of time, the Planning Director may schedule a courtesy hearing to consider an appropriate general zoning district consistent with section 21-362. Absent a rezoning to a general zoning district, all conditions, restrictions, and plan details of the conditional district remain in effect.

(Ord. of 1-19-98, § IV; Ord. of 10-18-04; Amend. of 11-2-09; Amend. of 10-4-10; Amend. of 3-5-12; Amend. of 9-6-16; Amend. of 6-21-21)

Sec. 21-63. Application re-submittal for special use permits and conditional districts.

- (a) If conditionally approved, the applicant may submit a revised application within forty-five (45) days of having received the decision of the appropriate board. The revised application shall include provisions described in conditions placed on the application. If the conditionally approved application is not resubmitted within the prescribed time period the application shall be deemed to be disapproved.
- (b) If a special use permit or conditional district application is denied, the administrator shall not accept another application similar to the denied application for the same property or a portion of the same property for a period of twelve (12) months from the date of the hearing, unless the administrator determines that:
 - (1) There has been a significant zoning district reclassification of an adjacent property;
 - (2) A new or updated land use plan which changes public policy regarding the property is adopted by the county; or
 - (1) Public facilities such as roads, waterlines, sewer lines, or other infrastructure are constructed or expand to serve the property and enable the proposed development to be accommodated.

(Ord. of 1-19-98, § IV; Amend. of 9-6-16; Amend. of 6-21-21)

PROCEDURES

The Board of Commissioners must develop a statement of consistency regarding the proposed zoning ordinance amendment describing whether its action is consistent with any adopted comprehensive plans [sec. 21-362 (j)]. Planning Board recommended statement will be available at the hearing.

STAFF COMMENTS

As noted in the background information, this text may serve to expedite the review of certain minor changes to sites and provide applicants additional flexibility with CD submittals.