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January 2021

## Overview

As local governments, developers, and community stakeholders work to build agreement on proposed development projects, they have long sought a mechanism for customizing development decisions to the context of a given project and site. The resulting tools developed over the years to accomplish this goal have included conditional and special use permits, conditional use district zoning, and more recently, conditional zoning. Chapter 160D continues this evolution to help clarify and simplify the process for attaching site-specific conditions as part of the development approval process.

The following sections outline basic procedures, key changes, policy considerations, statutory authority, and sample ordinance language for using conditional zoning. Of course, as with any policy decisions and ordinance language, each jurisdiction should carefully consider the preferred approach for that community. The sample ordinance language is included to provide examples, but any community that draws from this sample language must tailor it to the context of its codes and local circumstances.

## Context: Pre-160D Procedures

A longstanding challenge in North Carolina land use law has been understanding the difference between conditional zoning, conditional use permits/special use permits, and conditional use districts.

- **Conditional zoning** is a legislative process in which an applicant proposes, and the local government considers, a map amendment that includes additional conditions. Conventional zoning map amendments change the zoning district applicable to a piece of property, but do not include any standards beyond the base standards of the zoning ordinance. Conditional zoning allows the local government and the applicant to agree on additional conditions that may be appropriate for a particular project within the context of a legislative rezoning.
  - **This method continues to be an option under Chapter 160D.** Chapter 160D refers to this process as “conditional zoning” or “conditional district zoning.”

This Chapter 160D Guidance is one in a series of guidance documents intended to provide supplemental information on specific topics. Additional guidance documents, training videos, an explanatory book, and other Chapter 160D resources are available at [nc160D.sog.unc.edu](http://nc160D.sog.unc.edu).

- **Special Use Permits (formerly called conditional use permits or special exceptions)** are site-specific approvals that require a quasi-judicial process. This process is often used for uses that might only fit a particular area in certain situations, or for which some additional scrutiny is desired. These standards generally involve some discretion, so the local government uses a quasi-judicial process to help make sure the rights of all parties to a fair hearing are protected. Some zoning districts allow certain uses only as “special uses,” and the process for approving these special uses requires the applicant to present—and the decision-making body to consider—competent, material, and substantial evidence that the proposed use meets certain standards that are outlined in the ordinance. If sufficient evidence is presented that the proposal meets the standards, the permit is issued; if sufficient evidence is not presented, the permit is denied.
  - **This method continues to be an option under Chapter 160D.** Chapter 160D refers to these permits as “special use permits.”
- **Conditional Use District Zoning** is a process that combines a legislative rezoning with a quasi-judicial conditional use permit approval. The legislative process rezones the property to a district that requires *all* uses to obtain a quasi-judicial conditional use permit, and a quasi-judicial process (often run in parallel) permits the imposition of site-specific conditions. This hybrid, combined process was designed to allow conditions to be applied to rezoning projects while staying within the former scope of local government authority. However, it is complicated, can be confusing, and requires administering two parallel processes to achieve one goal.
  - **This method is no longer an option under Chapter 160D.**

The existence of these three very different types of decisions with such similar names has been an ongoing source of confusion for participants in the zoning process, including public officials, staff, applicants, and the public.

## Basic Provisions

Chapter 160D adopts several measures to reduce this confusion:

- **Separate nomenclature.** Chapter 160D applies the term “conditional districts” or “conditional zoning” exclusively to legislative decisions, as in Sections 160D-102(7) and 160D-703; and it designates the term “special use permit” exclusively for quasi-judicial decisions, as in Sections 160D-102(30) and 160D-705(c). The statutes no longer use the term “conditional use permit”.
- **Elimination of Conditional Use District Zoning:** A more substantive change is the removal of authority to use conditional use district zoning. A zoning ordinance may allow legislative conditional zoning. It may also allow quasi-judicial special use permits. But it may no longer

divide the decision-making process for one project into two parallel processes with different legal requirements. As of January 1, 2021, special or conditional use *districts* will become conditional districts, and special or conditional use *permits* will be deemed special use permits. This update happens by operation of law—specifically, Section 2.9(b) of Session Law 2019-111—so it happens automatically; no districts or permits will need to be re-approved. Within a conditional district, any conditions that applied to the district will still apply, but a local government cannot require new special use permits for uses in these districts. Some jurisdictions may want to update their zoning maps in order to clarify what conditions apply to what property.

- **Administrative modifications:** Without additional authority, one potential challenge with conditional zonings is that even minor revisions to already-approved projects may need to go through a full rezoning process. An amendment to the zoning map or to site-specific zoning conditions can be a time-consuming process, especially for making minor changes. As a result, Chapter 160D-703(b) authorizes local governments to establish a process for allowing minor modifications to be approved administratively, as long as the proposed changes don't "involve a change in uses permitted or the density of overall development." Any changes that don't qualify as minor modifications have to go through the same process as a zoning map amendment.
- **Individual modifications in a multi-property conditional zoning:** Chapter 160D-703(b) also allows individual property owners who are part of a larger conditional rezoning to propose the revision of conditions on their property only, as long as the changes would not affect the ability of the other property owners to meet their required conditions.
- **Transition period.** Section 2.9(b) of Session Law 2019-111 addresses the transition for existing conditional use districts. Any conditional use district or special use district in effect on January 1, 2021, becomes a conditional district. Any special or conditional use permit issued separately or as part of those approvals remains valid and is deemed a special use permit after that date. This change is effective without the need to re-adopt any prior conditional zoning or special use approvals. However, local governments may want to consider including a provision in their ordinance stating that, as of January 1, 2021, all past conditional zoning, conditional use district zoning, and special use permit approvals will be described by the updated nomenclature. Local jurisdictions may also want to update district names in their zoning maps.
- **Obtaining Property Owner Signatures for Conditions in Writing:** One other provision that is now expressly required in N.C.G.S 160D-703(b) is to acquire the signatures of all property owners consenting to the conditions included as part of the conditional zoning. There is not a required form, so the written consent could take multiple forms -- a signature on a decision document listing the conditions, a signature block on the site plan listing

conditions, an affidavit from the petitioner consenting to the agreed upon conditions as reflected in the specific decision, or otherwise. A local government may also want to only make the conditional zoning effective when these signatures have been provided to prevent a situation in which the local government grants the zoning entitlement without obtaining the corresponding commitment from the applicant to abide by the conditions of approval.

## Key Considerations

Local governments have a number of policy choices to make regarding the establishment and use of conditional zoning districts. These include the following:

- **Should our local government authorize the use of conditional zoning?** An initial question for local governments is whether they should authorize conditional zoning, if their local ordinances do not already include it. One of the features that governing boards often like about conditional zoning is that it uses the more familiar legislative process, which gives them strong legal authority to make the decisions they feel are in the best interests of the community, and does not limit their ability to reach out to and get input from stakeholders, or to negotiate directly with applicants. This is in contrast to the more bounded decisions of special use permits, in which the decision-making body is not allowed to investigate a project or take input outside of the hearing, and is obligated to issue the permit if the applicant meets the required findings; and the limited scope of administrative decisions, in which the project must be approved if it meets the stated ordinance requirements. If a jurisdiction elects to allow the use of conditional zoning, it can make this choice clear by including a provision in the zoning or unified development ordinance describing the process and whatever parameters the governing board chooses to set (such as only allowing conditions to be more stringent than the comparable conventional district).
- **What kinds of projects should involve conditional zoning and which should require special use permits?** The special use permit process often works well in situations in which the potential land use might be appropriate in the proposed location, and the question is simply a matter of confirming that it addresses some key community considerations, as modified by any appropriate conditions of approval. More complicated projects and sites, as well as those projects for which greater public input is desired, may benefit from the greater discussion that can occur with conditional zoning.
- **In what kinds of zoning districts should conditional zoning be authorized?** Communities often authorize conditional zoning in all zoning districts to allow for appropriate customization of proposed development projects wherever they might be located in the community. However, they could certainly choose to limit where conditional zoning is allowed; for example, by focusing on areas that are undergoing

significant change or that transition between two distinctly different areas where development of a more customized solution is desirable.

- **What kinds of conditions should be allowed?** Another policy question is whether to allow conditions that are more restrictive *or less restrictive* than existing development standards, or to limit conditions to those that are more restrictive than existing standards. The latter approach may make sense in fast-growing communities with significant greenfield areas that want to use conditional zoning to help encourage projects with higher standards. Allowing conditions of both kinds may make more sense in communities with limited greenfield opportunities or more constrained potential development sites that may necessitate some relief from current requirements in order for projects to work physically and economically.
- **Should a site plan or concept plan to be required?** Many communities that authorize conditional zoning request that applicants provide a site plan, or in some cases, a concept plan, as part of the rezoning application. On one hand, this helps the local government to better understand and evaluate the proposed project, and usually becomes a mutually-agreed-upon conditional of approval to help ensure appropriate follow through and to provide both the local government and the applicant with greater certainty about the scope of permitted development. In addition, it helps to demonstrate that the applicant has worked through the major features of the project and is ready to move forward with development after receiving approval. On the other hand, some applicants may balk at, or may not be in a position to spend, the substantial time and expense required to prepare a full site plan prior to approval of their proposed rezoning. Depending on the degree to which the local government shares this concern (or wishes to encourage or discourage more complex developments), it might consider requiring a sketch plan that is short of a full site plan but includes information such as the proposed development envelope, the general scope of building sizes and uses, and the major access points and circulation.
- **Should minor modifications be approved administratively?** Another consideration for local governments is whether to allow proposed minor modifications to approved conditional rezonings to be handled administratively. This can help applicants, boards, and staff avoid going through a full rezoning process simply to change minor features of the site plan or other project components, such as minor adjustments to building orientation, parking layout, or other minor elements of the project. The SOG 160D Guidance series includes a separate write-up specifically devoted to this topic (see 160D Guidance #1: Administrative Modifications).

## **ORDINANCE AMENDING THE VANCE COUNTY ZONING ORDINANCE ALLOWING FOR CONDITIONAL ZONING**

**WHEREAS**, Chapter 160D of the NC general statutes authorizes local governments to undertake conditional or conditional district zoning; and

**WHEREAS**, conditional/conditional district zoning provides the opportunity for a local government to consider a map amendment and property rezoning that includes the ability to agree on additional conditions that may be appropriate for a particular projects within the context of a legislative rezoning; and

**WHEREAS**, authorizing conditional zoning will continue to provide opportunities for public input into the rezoning process while providing the opportunity for the County to add appropriate development conditions; and

**WHEREAS**, the Planning and Development Department with assistance from the Vance County Planning Board and County Attorney have discussed and recommend specific language be added to the Vance County Zoning Ordinance authorizing the use of conditional zoning in the County; and

**WHEREAS**, conditional zoning supports multiple goals, objectives and strategies within the County land use plan such as encouraging development at a rate and pattern that can be efficiently and effectively served by existing and planned services and facilities, improving the visual image while preserving the natural character of the county, allowing for density incentives for particular housing types in short supply as well as providing flexibilities for the developer to provide and the County to request and/or require open space preservation within new developments; and

**WHEREAS**, the proposed amendment is therefore consistent with the Vance County land use plan, is reasonable, and is in the public interest;

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS**, that:

A. The Vance County Zoning Ordinance be amended as follows (deletions as ~~striketroughs~~, additions shown as underlined text):

1) AMEND Section 3 to add the following:

### **3.3 CONDITIONAL ZONING DISTRICTS**

A. In addition to the general use zoning districts established in Section 3.2, a corresponding conditional zoning district, bearing the designation 'CZ', may be established in accordance with the provisions of Section 11.6. Accordingly, the following conditional zoning districts may be designated upon approval by the Board of County Commissioners of a petition by the property owners to establish a conditional zoning district:

1. CZ-AR, Agricultural Residential Conditional Zoning District
2. CZ-WOZ, Watershed Overlay Zone Conditional Zoning District
3. CZ-R30, Residential Low Density Conditional Zoning District
4. CZ-R20, Residential Medium Density Conditional Zoning District
5. CZ-R10, Residential High Density Conditional Zoning District
6. CZ-OS, Open Space Conditional Zoning District
7. CZ-RMHC Planned Manufactured Housing Community Conditional Zoning District
8. CZ-EIA, Employment and Institutional Area Conditional Zoning District
9. CZ-HC, Highway Commercial Conditional Zoning District
10. CZ-GC1, General Commercial Conditional Zoning District
11. CZ-LI, Light Industrial Conditional Zoning District
12. CZ-IM, Industrial Mining/Quarry Conditional Zoning District
13. CZ-OI, Office Institutional Conditional Zoning District

- B. The development and use of property within a conditional zoning district is subject to predetermined ordinance standards and the rules, regulations, and conditions imposed as part of the legislative decision creating the district. All regulations which apply to a general use zoning district also apply to the corresponding conditional zoning district. All other rules, regulations, and conditions which may be offered by the property owner and approved by the Board of County Commissioners as part of the rezoning process shall also apply. Property may be placed in a conditional zoning district only in response to a petition by the owners of all of the property proposed to be included in the conditional zoning district. Requirements for conditional zoning districts are delineated in Section 11.6.

2) AMEND Section 11 to add the following:

**11.6 Conditional Zoning**

- A. There are circumstances in which a general zoning district designation allowing 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 this Ordinance and adopted land development plan, comprehensive plan, corridor plans, small area plans, and other land use policy documents. The rezoning process established in this Section provides for the accommodation of such uses by a reclassification of property into a conditional district, subject to additional conditions which ensure compatibility of the proposed use with the use and enjoyment of neighboring properties. A conditional district allows a particular use or uses to be established only in accordance with specified standards and conditions tailored to each individual development project. This is a voluntary rezoning procedure that is intended for firm development proposals. It is not intended or suited for securing early zoning for tentative proposals that may not be undertaken for some time.
- B. The review and approval process for conditional district petitions involves a legislative hearing and legislative decision by the Board of County Commissioners. The review of conditional district petitions shall be undertaken in accordance with the provisions of Sections 11.
- C. Property may be placed in a conditional district only in response to a petition by the owners of all the property to be included. A petition for a conditional district shall include:
1. A master site plan prepared in accordance with Sections 2.2, 6.9 and as required by this ordinance;
  2. Written supporting documentation that specifies the actual use or uses proposed for the property, and
  3. Proposed rules, regulations, and conditions that, in addition to all predetermined requirements of this Ordinance, will govern the development and use of the property.
  4. A statement analyzing the reasonableness of the proposed rezoning.
- D. Conditional districts, as established in Section 3.3, parallel general use zoning districts. Only those land uses (including uses by right, special uses, and conditional uses) permitted in a general use zoning district to which a conditional zoning district corresponds shall be allowed. All requirements of any corresponding general use district and all other requirements of this Ordinance apply to a conditional district except to the extent that the approved rules, regulations, and conditions included in the petition for rezoning are more restrictive than the general use district requirements.
- E. Review and Approval Process: The review and approval of a petition for a conditional district shall follow the same process as outlined in Section 11 for a general use rezoning.
1. In the course of evaluating the proposed use, the Planning Board and/or the Board of County Commissioners may request additional information deemed appropriate to provide a complete analysis of the proposal.
  2. Conditional 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.

3. Conditional district decisions shall be made in consideration of identified relevant adopted land use plans for the area, including, but not limited to, land development plans, comprehensive plans, strategic plans, district plans, small area plans, corridor plans, and other land development policy documents.
- F. Conditions to Approval: Specific conditions applicable to the conditional 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.
1. 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.
  2. 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, storm water drainage, the provision of open space, and other matters that the Board of County Commissioners may find appropriate or the petitioner may propose. Such conditions to approval of the petition may include dedication to the 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.
  3. The petitioner shall have a reasonable opportunity to consider and respond to any such conditions prior to final action by the Board of County Commissioners.
  4. If for any reason any condition for approval is found to be illegal or invalid or if the petitioner 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 by the County to rezone the property to its previous zoning classification or to another zoning district.
- G. Effect of Approval: If a petition for a conditional district 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 this Ordinance and to the zoning map.
1. If a petition is approved, only those uses and structures indicated in the approved petition and site plan shall be allowed on the subject property. A change of location of the structures may be authorized pursuant to subsection I below provided that such change in building layout does not result in an increase in the number of structures.
  2. Following the approval of the petition for a conditional district, the subject property shall be identified on the zoning map by the appropriate district designation. A conditional district shall be identified by the same designation as the underlying general district preceded by the letters 'CZ' [for example 'CZ-R10'].
  3. No permit shall be issued for any development activity within a conditional district except in accordance with the approved petition and site plan for the district.
  4. 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 Ordinance and shall be subject to the same remedies and penalties as any such violation.
- H. Alterations to Approval: Except as provided in subsection 1 below, changes to an approved petition or to the conditions attached to the approved petition shall be treated the same as amendments to

this Ordinance or to the zoning map and shall be processed in accordance with the procedures in this Ordinance.

1. The Planning Director shall have the delegated authority to approve an administrative amendment to an approved site plan. The Planning Director 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. Any decision by the Planning Director must be in writing stating the grounds for approval or denial.
  2. The Planning Director, 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 Board of County Commissioners consideration is deemed appropriate under the circumstances. If the Planning Director declines to exercise this authority, the applicant may file a rezoning petition for a public hearing and Board of County Commissioners decision in accordance with the provisions delineated in Sections 11.
  3. Any request for an administrative amendment shall be pursuant to a written letter, signed by all of the owners of the property, detailing the requested change. Upon request, the applicant shall provide any additional information as deemed necessary by the Planning Director. Upon an approval of an administrative amendment, the applicant shall file a sufficient number of copies of the revised site plan as deemed necessary by the Planning Director.
  4. If the Planning Director denies approval of the requested administrative amendment, the applicant may file a rezoning petition for a public hearing and Board of County Commissioner decision in accordance with the provisions delineated in Sections 11.
- I. Review of Approved Conditional Districts: It is intended that property shall be reclassified to a conditional district only in the event of firm plans to develop the property. Therefore, no sooner than one year (or two years if a vested right has been established in accordance with the provisions of Section 1.8) after the date of approval of the petition, the Planning Board 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 Board determines that progress has not been made in accordance with the approved petition and conditions, the Planning Board shall forward to the Board of County Commissioners a report which may recommend that the property be rezoned to its previous zoning classification or to another zoning district.

B. The above amendments are effective upon adoption of this ordinance.

Adopted this \_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
Chair  
Vance County Board of Commissioners

ATTEST:

\_\_\_\_\_  
Kelly H. Grissom  
Clerk to the Board