

FORSYTH COUNTY
BOARD OF COMMISSIONERS

MEETING DATE: _____ **AGENDA ITEM NUMBER:** _____

SUBJECT:-

- A. Public Hearing on Zoning Text Amendment proposed by City-County Planning Board staff to amend Chapter B of the *Unified Development Ordinances* to create provisions for Conditional Use District Zoning (UDO 170).

- B. Approval of Ordinance

COUNTY MANAGER'S RECOMMENDATION OR COMMENTS:-

SUMMARY OF INFORMATION:-

See attached staff report.

After consideration, the Planning Board recommended approval of the rezoning text amendment.

ATTACHMENTS:- YES NO

SIGNATURE: _____ **DATE:** _____

ACTION REQUEST FORM

DATE: February 21, 2007
TO: The Honorable Mayor and City Council
FROM: A. Paul Norby, AICP, Director of Planning

COUNCIL ACTION REQUEST:

Request for Public Hearing on Zoning Text Amendment proposed by City-County Planning Board staff

SUMMARY OF INFORMATION:

Zoning Text Amendment proposed by City-County Planning Board staff to amend Chapter B of the *Unified Development Ordinances* to create provisions for Conditional Use District Zoning (UDO 170).

PLANNING BOARD ACTION:

MOTION ON PETITION: APPROVAL
FOR: UNANIMOUS
AGAINST: NONE
SITE PLAN ACTION: NOT REQUIRED

STAFF REPORT

DOCKET # UDO-170
STAFF: Kirk Ericson

REQUEST

This UDO text amendment is proposed by City-County Planning Board staff to amend Chapter B, Article II of the UDO by modifying section 2-1 and to amend Chapter B, Article VI by modifying Section 6-2 to create provisions for Conditional Use District Zoning.

BACKGROUND

Conditional Use District Zoning provides an option to Special Use District Zoning for petitioners to consider in securing rezoning approval. Conditional Use District Zoning allows uses to be restricted and simple conditions on development to be established, but does not include a site plan. This type of Zoning is already available in other Triad communities, including Greensboro and High Point, and would be a useful addition to our Unified Development Ordinances.

As proposed, Conditional Use District Zoning would be between General Use and Special Use Zoning on the zoning continuum. General Use Zoning permits the development of all uses permitted by right in a particular zoning district, as long as all the requirements of the UDO are met. This type of zoning does not require a site plan for rezoning approval and is not subject to additional written conditions. In contrast, Special Use Zoning requires a petitioner to provide the most detail by specifying the uses being proposed and to submit a site plan showing the proposed development design. Various development conditions may be placed upon a Special Use zoning request by City and/or County Departments, NCDOT, the Planning Board, and the Elected Bodies before rezoning approval is given. The development of a Special Use Zoned property is directly tied to the approved site plan and conditions. Any deviation, no matter how small, from the approved site plan requires either a staff change approval or a formal Site Plan Amendment for more substantive modifications. While Conditional Use District Zoning is somewhere between General Use and Special Use Zoning in terms of regulatory restrictions, it is more closely aligned with General Use Zoning due to the more limited scope of written conditions and lack of a site plan.

ANALYSIS

While Conditional Use District Zoning is more involved than General Use Zoning, it does not require the same level of detailed conditions or site plan of Special Use Zoning. Instead, Conditional Use Zoning relies solely on written conditions of approval in order to move a rezoning request forward. Sample conditions could include an expanded bufferyard, an increased building setback, or limiting permitted uses. Any Conditions of a Conditional Use District rezoning must be expressed solely in clear, easy to understand written form.

Staff recommends a pre-application conference be required for this type of zoning. The purpose of this conference is to advise a potential applicant whether Conditional Use Zoning is the most appropriate type of zoning for a particular request. In cases where conditions can not be clearly

explained and enforced through writing, Special Use Zoning may be recommended. Staff anticipates that this type of zoning will reduce the number of Special Use Zoning cases heard by the Planning Board each month, and a reduction in the amount of time spent handling site plans amendments and minor staff changes. Staff believes Conditional Use Zoning will be a desirable, simpler alternative to Special Use Zoning in many situations, particularly when petitioners may not fully know all the development details when the rezoning request comes before the Elected Body and where such details are not needed to warrant a requested zoning change. Conditional Use Zoning is particularly useful for situations like an industrial park where basic matters such as permitted uses can be easily addressed with written conditions without lengthening the permitting process with a formal site plan review by the Planning Board or Elected Body.

Staff believes that fees for Conditional Use District rezoning requests should be halfway between those of General Use and Special Use rezoning requests. Staff proposes fees of \$1,000 for sites of 2 acres or less, \$1,600 for 2.1-10 acres, \$1,900 for 10.1-25 acres, \$2,200 for 25.1-50 acres, \$2,500 for 50.1-100 acres, and \$2,500 plus \$25 per additional acre for sites over 100 acres. This fee structure reflects the amount of staff time required for reviewing Conditional Use requests. While these requests do not require the in-depth interdepartmental site plan review of Special Use District Zoning, interdepartmental review of written conditions will be required.

Minor staff changes will not be available for Conditional Use District rezonings. Staff changes are generally made to minor site plan items, and as such will not be appropriate for Conditional Use zoning. These requests will be approved or denied by the elected body based on their accompanying written conditions, and as such, any modification of these conditions should necessitate a new zoning case.

RECOMMENDATION

APPROVAL

Kirk Ericson presented the staff report.

PUBLIC HEARING

FOR:

Nancy Gould, 195 Executive Park Blvd, Winston-Salem, NC 27104

- I think this is such a good thing that I wrote about it in my article for the Homebuilders and Realtors Associations' newsletters this month.
- This type of rezoning will really help the "small guy".
- This may save staff some time.

AGAINST: None

Robert Vorsteg, 3620 Marlow Avenue, Winston-Salem, NC 27106

- The Neighborhood Alliance has not taken a position on this.
- We just had some questions.

- What will change if this ordinance is adopted?
- This will simplify things, but we can't even come up with an example of how it will work.

WORK SESSION

During discussion by the Planning Board, the following points were made:

1. Arnold King explained that the most common use of this type of zoning would be the elimination of uses as indicated in the staff report and presentation today. Staff gave a few examples including "Adult Establishment" which people may want to exclude if they have no intention of having that use. That would put the minds of the neighbors at rest over some of the more controversial uses in a district. For area where historic preservation is an issue, Conditional Use Zoning would be preferable to General Use Zoning.
2. Mr. Vorsteg expressed concern over such issues as runoff. However, those issues are automatically addressed throughout the interdepartmental review process, and a condition can be added for a stormwater study.
3. Arnold King explained that there is nothing in this ordinance that would take away anything in the ordinance that already applies. It would just add another option to general use zoning that is less detailed than special use zoning.

MOTION: Clarence Lambe moved approval of the zoning text amendment.

SECOND: Jerry Clark

VOTE:

FOR: Jerry Clark, Wesley Curtis, Carol Eickmeyer, Arnold King, Arthur King, Clarence Lambe, Lynne Mitchell, Brenda Smith

AGAINST: None

EXCUSED: None

A. Paul Norby, FAICP
Director of Planning

UDO-170
AN ORDINANCE AMENDING
CHAPTER B OF THE *UNIFIED DEVELOPMENT ORDINANCES*
TO CREATE CONDITIONAL USE DISTRICT ZONING

Be it ordained by the City Council of the City of Winston-Salem, North Carolina, that the *Unified Development Ordinances* is hereby amended as follows:

Section 1. Chapter B - Zoning Ordinance, Article II – Zoning Districts, *Official Zoning Maps*, and Uses, is amended as follows:

Chapter B - Zoning Ordinance

Article II - Zoning Districts, *Official Zoning Maps*, and Uses

2-1 ZONING DISTRICTS

2-1.1 ZONING DISTRICTS ESTABLISHED

(A) Jurisdiction

All the area within the zoning jurisdiction of the adopting jurisdiction is hereby divided into zoning districts within which the use of land and water areas, the location, height, bulk and use of structures, the provision of parking and loading areas, and other development requirements are regulated as herein provided.

(B) Designated Districts

General use districts, Conditional Use Districts, special use districts, overlay and special purpose districts, with the symbol designations, general purposes, and other requirements as cited herein, are hereby created.

(C) Special Use Districts

The special use districts are established as companion districts to the general use districts, except for the MU-S and MRB-S Districts. References in this Ordinance to a general use district shall be construed to also include the corresponding special use district. Each special use district is intended to accomplish the purposes of the corresponding general use district through the development of identified uses at a specific location in accordance with a site plan acceptable to the Elected Body. All regulations which apply to a general use district also apply to the corresponding special use district. Additional reasonable site plan conditions which may be required by the Elected Body and agreed to by the petitioner as part of the rezoning process also apply.

(D) Conditional Use Districts

The Conditional Use Districts are established as companion districts to the General Use Districts. References in this Ordinance to a general use district shall be construed to also include the corresponding Conditional Use District. Each Conditional Use District is intended to accomplish the purposes of the corresponding General Use District through

the development of minimal conditions created to ensure compatibility between the development and the surrounding neighborhood. All regulations which apply to a General Use District also apply to the corresponding Conditional Use District. Additional reasonable conditions which may be required by the Elected Body and agreed to by the petitioner as part of the rezoning process also apply. All conditions in Conditional Use Zoning Districts must be clearly expressed in written form without the aid of any supporting graphics. Conditional Use Zoning is not intended to be a substitute for Special Use Zoning, which requires a detailed site plan and is also accompanied by development conditions.

~~(D)~~(E) **Purpose Statements**

District purpose statements in this section refer only to general objectives for each zoning district.

~~(E)~~(F) **Dimensional Requirements**

The general dimensional requirements for each zoning district cited in this section are subject to additional provisions as noted in Section B.3-1.

~~(F)~~(G) **Growth Management Plan**

The *Growth Management Plan* of *Legacy* seeks to guide future development patterns in the community to provide services in a cost effective and efficient manner; allow for urban, suburban, and rural life styles; and preserve environmental and cultural resources. The *Growth Management Plan* divides the county into five growth management areas as follows:

- (1) City/Town Centers (GMA 1);
- (2) Urban Neighborhoods (GMA 2);
- (3) Suburban Neighborhoods (GMA 3);
- (4) Future Growth (GMA 4); and
- (5) Rural Area (GMA 5).

Goals are identified in *Legacy* for each of these areas. Zoning districts established by this Ordinance have been designed, in part, to achieve the goals of the growth management areas. Copies of *Legacy* are available in the office of the Planning Board.

Section 2. Chapter B – Zoning Ordinance, Article VI – Administration and Amendments is amended as follows:

Chapter B - Zoning Ordinance

Article VI - Administration and Amendments

6-2 Ordinance Amendments: Zoning Text and Official Zoning Maps

6-2.1.2 CONDITIONAL USE DISTRICTS

(A) Requirements and Application

All requirements of general use zoning shall be met. Only the property owners of the property to be included in the district shall apply for rezoning to an appropriate

Conditional Use Zoning District. The owners shall specify the uses of the property and shall propose conditions to ensure compatibility between the development and the surrounding neighborhood. The application may include supporting information and text that specifies the actual use(s) 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. All conditions must be clearly and simply expressed in written form. Rezoning requests with conditions that cannot be expressed in this manner will require Special Use District Zoning.

(B) Preapplication Conference

Prior to the formal submission of a proposed Conditional Use Zoning District, the developer or representative shall attend a preapplication conference with the Director of Planning concerning the proposed plan of development. At this preapplication conference, the developer shall submit general information on the proposed development for tentative review, comments, and recommendations by the Director of Planning. The Director of Planning shall comment on whether the proposed development is suitable for Conditional Use Zoning within thirty (30) days. No rezoning petition for a Conditional Use Zoning District shall be accepted until this process has been completed.

(C) Compliance with General Use Provisions

Any petition to amend district boundaries to create a Conditional Use District shall comply with procedures for general use district amendments set out in this article except to the extent that the approved conditions are more restrictive than those requirements.

(D) Uses Within District

Within a Conditional Use Zoning District, only those uses authorized by Section B.2-4 (Permitted Uses) as allowed in the general use zoning district to which the Conditional Zoning District corresponds shall be permitted. All uses indicated in Table B.2.6 as requiring Planning Board Review, an Elected Body Special Use Permit, or a Board of Adjustment Special Use Permit shall meet the corresponding requirements of section B.6-1. No uses shall be permitted except those uses authorized by the Conditional Zoning District approval.

(E) Conditions

In a Conditional Use Zoning District, conditions may include but are not limited to the location on the property of the proposed uses; the number of dwelling units; the location and extent of supporting facilities such as parking lots, driveways, access streets, sidewalks and greenways; the location and extent of buffer areas and other special purpose areas such as outdoor storage and mechanical areas; the timing of development; the location and extent of rights-of-way and other areas to be dedicated for public purposes; and other such matters, such as lighting or signage, as the applicant may propose as conditions upon the request. All conditions must be clearly expressed in a non-graphical, written format.

(F) Planning Board Action

The Planning Board may take one of the following actions on a Conditional Use District Zoning petition:

(a) Recommend Approval. Recommend approval of the petition as submitted.

(b) Recommend Approval with additional conditions as appropriate, as referenced in Section B.6-1.3(A)(1). These conditions must be clearly enforceable without the aid of a site plan or other graphic. The Planning Board may consider the following additional conditions:

(i) Preservation of unique natural or constructed features, including retention of existing vegetation;

(ii) Consolidation of signage for shopping centers or multiple use projects;

(iii) Reduction in overall density for residential projects;

(iv) Reduction or limitation in the uses requested;

(c) Recommend Denial. Recommend denial of the petition, with reasons stated.

(G) Decision Regarding Petition

If the Elected Body finds that a petition for Conditional Use District zoning should be granted, the Elected Body shall rezone the property and issue a Conditional Use District Zoning permit. If the Elected Body finds that the proposed Conditional Use District should not be created, the Elected Body shall deny the petition.

(H) Conditions of Approval

In rezoning for a Conditional Use District, the Elected Body may impose additional conditions as appropriate, as referenced in Section B.6-2.1.2(E). If all requirements and conditions are accepted by the petitioner, the Elected Body shall rezone the property and issue a Conditional Use District Zoning permit, attaching thereto and incorporating therein the conditions mentioned above. In approving a Conditional Zoning District, the Elected Body, upon request of the applicant, may impose only more restrictive requirements upon such district as it may deem necessary in order that the purposes and intent of this Ordinance be served. No condition on a Conditional Zoning District application shall have the effect of removing or amending any requirement of this Ordinance.

With approval of the petitioner, the conditions may include that upon the occurrence or nonoccurrence of a specified event or events, including a stated time period or time lapse, the property automatically reverts to its immediately preceding zoning classification without further notice, proceedings, hearings, or Board action.

(I) Permit Issuance

No permit or other governmental entitlement for the use, development, or division of land proposed to be zoned to a Conditional Use District shall be issued until the Conditional Use District Zoning permit has been approved by the Elected Body.

(J) Effect of Conditional Use District Zoning Permit

Once a Conditional Use District Zoning permit has been issued by the Elected Body, it shall be binding upon the property included in such permit, unless subsequently changed or amended by the Elected Body as provided for in this ordinance. All conditions approved by the Elected Body shall be attached to and incorporated in the Conditional Use District Zoning permit and shall become a part thereof.

- (K)** **Amendment of Conditional Use District Zoning Permit**
The Elected Body may change or amend any Conditional Use District Zoning permit, only after public notice and hearing, upon recommendation of the Planning Board, and subject to the same procedures provided in this ordinance for granting Conditional Use District zoning. Minor changes to Conditional Use District Zoning Permits may be made by the Planning Board.
- (L)** **Enforcement of Conditions of Conditional Use District Zoning Permit**
Any violation of a condition of a Conditional Use District Zoning permit shall be a violation and subject to the enforcement provisions of Section B.9.

Section 3. This ordinance shall be effective upon adoption.