



**CHATHAM COUNTY
BOARD OF COMMISSIONERS
AGENDA ABSTRACT**

ITEM NUMBER:
MEETING DATE:
November 21, 2005

PART A

Subject: Public hearing to consider proposed text amendments to the Chatham County Zoning Ordinance to replace conditional use zoning with conditional zoning.

Action Requested: Hold a hearing and receive public comments.

Attachments: 1. Text of the proposed amendment.

Submitted By:

Keith Megginson, Planning Director

Date

County Manager Review:

Charlie Horne, County Manager

Date

This abstract requires review by:

☐ **County Attorney**

Date Reviewed

☐ **Finance Officer**

Date Reviewed

☐ **Budget Officer**

Date Reviewed

PART B

Re: Proposed text amendments – Zoning Ordinance

Introduction & Background:

The attached draft amendment to the Zoning Ordinance would replace conditional use zoning with conditional zoning. On July 17, 2005 the Planning Department presented an overview of conditional zoning to the Board of Commissioners at a work session. At the end of the presentation the consensus of the Board was to forward this information to the Planning Board for further investigation and to develop an amendment for public hearing. Since that time the Planning Department and Planning Board have performed additional background research and developed the attached amendment for a public hearing.

Discussion & Analysis:

In early 2005, the Planning Department began to research the procedures that other jurisdictions in North Carolina use for processing rezoning requests in an effort to improve the rezoning process for Chatham County. There have been several requests from various citizens and citizen groups to provide more time to prepare for rezonings prior to the public hearing and to provide additional comment after the public hearing. After researching the procedures of other jurisdictions the Planning Department determined that a relatively new rezoning process termed conditional zoning did offer some advantages over the currently adopted conditional use zoning process. A presentation was made to the Board of Commissioners in July 2005 and the Board requested that the Planning Department and Planning Board conduct further research and prepare an amendment to the Zoning Ordinance.

In the ensuing months the Planning Department has worked with the Planning Board in preparing the attached amendment, as well as presenting information at a public meeting. The Planning Department website has also been continuously updated during the development of the draft amendment to provide the public with timely and accurate information.

The attached draft amendment to the Chatham County Zoning Ordinance would remove the conditional use zoning process and replace it with conditional zoning. As previously discussed, conditional zoning is a relatively new zoning approach that is similar to conditional use zoning in appearance, but which is technically very different. Conditional zoning is a one step legislative process that allows for site specific development plans and uses to be approved for a particular property at the request of an applicant. In contrast, the currently adopted conditional use zoning process involves two steps, which are a legislative and quasi-judicial decision by the Board of Commissioners. There are several implications as a result of this conditional use process, that require different standards to be applied to each decision, which complicates the zoning process. Several jurisdictions have adopted the conditional zoning process over the past few years after judicial decisions validated the technique. In recent months the conditional zoning process was incorporated in the General Statutes, by the State legislature.

Re: Proposed text amendments – Zoning Ordinance
Discussion & Analysis – con't

As proposed, the currently adopted conditional use districts would be reclassified as conditional districts, but the underlying conditional uses and associated conditions would not change. An additional mixed use district has also been added to the list of zoning districts to provide greater opportunities for integrated, mixed use projects. Under conditional zoning an applicant would request a use or uses as part of a rezoning request, which is the current procedure for conditional use permits. During the rezoning process the Planning Board could recommend that additional conditions be added to the project, as is the current process. The Board of Commissioners could then request that these conditions be added to the conditional district approval. If the applicant disagrees with the conditions the Board of Commissioners can either deny the request or not require the conditions.

The application process for conditional zoning district petitions would vary from the current process used for conditional use districts. One significant change is a requirement that an applicant hold a community meeting at least 30 days prior to the application deadline. The purpose of the community meeting would be to give the developer and interested parties an opportunity to discuss the project. The developer would be responsible for submitting a community meeting report as part of the application packet. As currently drafted, the applicant would be required to notify adjoining property owners of the community meeting by standard mail at least two weeks prior to the meeting. One issue discussed at the previous planning board meeting was how to define the audience for the community meeting and the notification requirements. The purpose of the community meetings is not intended to limit the audience to the surrounding property owners, but it does recognize they would experience the most direct impact from a proposed development.

The application requirements are also more specific than the standards currently required for a conditional use permit. There are specific requirements that must be included with each application plus a list of optional requirements that can be required at the discretion of the Planning Department staff, Planning Board, or Board of Commissioners. These requirements would help to standardize the materials that are submitted with an application and more clearly detail the expectations of the County during the preliminary stages of the applicant's design.

As previously discussed, conditional zoning does not require a quasi-judicial proceeding, as is currently required to issue a conditional use permit. The effect is that sworn testimony is not required at the public hearing and the Board of Commissioners are not prohibited from receiving comments about the issue outside of the public hearing. The Planning Board and Planning Department staff have received comments raising concerns about the removal of these standards. However, these standards have caused confusion among the general public about how zoning issues are processed such as when an item can be discussed with the various Boards, what constitutes evidence at the public hearing, and who is qualified to speak at the hearing. These issues can have the effect of limiting citizen input. Comments have also been submitted questioning the removal of the findings of fact. The amendment does provide 4 standards that the Commissioners would consider when considering a conditional

Re: Proposed text amendments – Zoning Ordinance
Discussion & Analysis – con't

zoning reclassification. The wording of these standards is similar to the findings of fact, but they do not have the same implications in the decision making process as regards what constitutes the record for the rezoning petition.

The amendment also has provisions for existing conditional use permits. If the permits are in compliance, they are considered as grandfathered and no further action would be needed. If someone wanted to modify the conditions of a conditional use permit it would need to be reclassified to the corresponding conditional district and handled through the rezoning process.

On the surface conditional zoning appears to be similar to conditional use zoning in that the end product is an approved site plan with any added conditions. The mechanics for achieving the end product however are much different. The rationale for this conversion is to remove the complexity of deciding a legislative and quasi-judicial decision simultaneously. The community meeting is also included as a method for the developer and community to discuss the project prior to the public hearing and outside of the more formal public hearing process. This will allow the developer an opportunity to modify their project prior to the application deadline to address concerns raised at the meeting or possibly not proceed with a rezoning request. It will also allow for citizens to be better prepared for the public hearing.

Budgetary Impact:

Recommendation: