

PLANNING & ZONING REVIEW NOTES

VII. E.

SUBJECT: Discussion of draft text amendments to the Chatham County Zoning Ordinance to replace conditional use zoning with conditional zoning.

ATTACHMENTS:

1. Refer to notes and attachments for this and previous meetings.
(*Note: See 10/70 notes for public comments regarding 10/70 and conditional zoning.*)
2. Email correspondence from Dave Owens
3. Sample Community Meeting Notice Letter
4. Sample Community Meeting Report

INTRODUCTION AND BACKGROUND: The Planning Board has had several discussions comparing conditional use zoning with conditional zoning. On November 21 a public hearing was held regarding the proposed amendment.

DISCUSSION AND ANALYSIS: As previously discussed, conditional zoning is a relatively new zoning approach that is similar to conditional use zoning in appearance, but which is technically 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. Several jurisdictions have adopted the conditional zoning process over the past several years after judicial decisions upheld its' use. In recent months the conditional zoning process was incorporated in the General Statutes, by the State legislature.

Many of the comments received at the public hearing can be grouped into two categories as follows: (1) more public involvement in the rezoning process and (2) keeping the conditional use zoning process. There was an overwhelming sentiment from speakers that the existing conditional use process should not be replaced, but should be improved, and all of the Commissioners in attendance expressed concerns about conditional zoning. Several speakers commented that the current process does not allow adequate time for the public to prepare for a hearing and that typically there are only 2-3 weeks to read an application and prepare comments. It was also voiced that improvements to the procedures for the current process could be tightened.

One item that was introduced as part of the proposed amendment was the addition of a community meeting. Planning Department staff thinks that this meeting will provide an opportunity to allow more public input, earlier in the process, with little impact on current staffing levels. The meeting would be held at least 30 days prior to the application deadline by the developer, and a report of the meeting would be included with the application. Several speakers expressed support for a community meeting, but disagreed with the proposed notification requirements and standards for the report. Notice of the community meeting would be required to be mailed to adjoining property owners, by the developer, at least 2 weeks prior to the meeting. Several speakers commented that community groups should also be invited to attend. Additionally, it was thought that the report should be approved by various community groups before it could be submitted with the application.

Re: Conditional Zoning – con't

There are several problems that could occur with the recommendations that were made at the hearing. A requirement to mail notices to community groups poses several concerns as follows: what constitutes a community group and who makes that determination, who maintains the list of qualified community groups and do groups need to register on a regular basis, and should groups based outside of the County be allowed to participate. Another concern is that representatives of a community group have the potential to dilute the concerns of adjoining property owners with issues that are broader in nature and that should be presented at a public hearing. If the Board's think that more participation is needed, an alternative would be to require that the applicant run community meeting notices using methods similar to the public hearing notices. This would be more equitable and allow any interested party to attend the community meeting.

Another problem with the recommendations from the public hearing is that having a community group(s) approve a community meeting report prior to submitting the application, has the potential to stall the rezoning process. What groups would be authorized to approve community reports and who arbitrates if an agreement cannot be reached? This also assumes that a representative for a community group(s) will have to attend every community meeting. Should an applicant be held responsible if a community group fails to have a representative at a meeting? It should be noted that the purpose of the community meeting report is not to provide a set of minutes or a transcript of the meeting. It is primarily designed to provide a general overview of who was invited, who attended, the general items that were discussed and if any changes were made as a result of the meeting. If participants think that the community report is insufficient, they can provide their own report and comments at the public hearing.

Another concern raised was that the community meeting was not required to be held by the applicant, which is not correct. The proposed amendment clearly states that a community meeting is required. However, if no-one, other than the applicant, attends the meeting a report is still required to be submitted stating the efforts that were made to hold a meeting.

Several speakers also commented that a community meeting would not be appropriate for every rezoning, and that there should be a distinction between major and minor proposals. Setting standards to determine when a community meeting is required oversimplifies the impacts that a rezoning request has on the adjoining property owners, the surrounding neighbors, and the larger community. The impacts of a small scale rezoning can be as significant as a large scale rezoning depending on the nature of the use or the proposed layout.

It was also recommended that two public hearings be held for each application, instead of adding a community meeting. Due to current staffing levels in the Planning Department, the requirements for preparing mailings and notes for two public hearings would be difficult and would introduce more opportunities for errors in processing applications. The Planning Department staff considered the possibility of having two public hearings during the drafting of the amendment, but thinks that the community meeting offers the best opportunity for additional community input with a limited impact on the department. Additionally, both of the public hearings would need to be conducted with the Board of Commissioners present. If the Planning Board held a separate public hearing, the information presented at that meeting would be irrelevant because the Commissioners would not have an opportunity to hear the evidence that was presented.

Re: Conditional Zoning – con’t

The second main area of comments focused on maintaining the current conditional use process. One concern raised by several speakers was that the removal of the findings of fact lowered the standards required by the Commissioners to approve a project. The proposed amendment included four standards for consideration by the Board of Commissioners when making a final zoning decision. These four standards are similar to the five findings of fact; however the wording for the five findings could be used in lieu of the four standards.

Another concern that was voiced was the removal of the quasi-judicial process and its accompanying standards. The proposed amendment would remove the quasi-judicial process and replace it with a purely legislative process. This would remove the need to have sworn testimony at the public hearing, for the Commissioners to not participate in ex parte communications, and for the Commissioners to make the five findings based solely on the information received at the public hearing. As many speakers commented at the public hearing, the current process could be left in place and the procedures tightened.

If the current process is left in place, the following issues would need to be evaluated and possibly addressed (also see attachment #2):

- Once an application is submitted will any additional information be accepted from the applicant after the application deadline?
- For each item, should Commissioners and Planning Board members discuss whether there were any ex parte communications before or after the public hearing that could influence their decision? This would include email correspondence, phone calls, and one-on-one discussions.
- Before each item, should Commissioners and Planning Board members discuss whether they have a predetermined opinion about an item that is not susceptible to change?
- Once the public hearing is closed, should any additional information be allowed to be submitted by the applicant or the public for consideration? This would include evidence from the public to refute testimony presented at the public hearing, as well as revised information from the applicant based on comments from the public hearing.
- Will the Planning Board accept any additional information from the public (including adjoining property owners) or the applicant at their meeting, after the public hearing? Should Board members only be able to ask questions about evidence presented at the public hearing?
- Should the agenda items be split into two separate items; one public hearing for the legislative conditional use zoning and one evidentiary hearing for the quasi-judicial conditional use permit? The implication is that speakers would need to sign up for two public hearing items and make sure that their comments were specific to each item.
- Should the following standard be applied? The applicant is required to present evidence that the standards of the ordinance are met. If the applicant presents sufficient evidence that the standards are met, the applicant is legally entitled to the permit. Likewise, opponents of a conditional use permit bear the burden of producing evidence and the ultimate burden of proof with respect to “general” findings (excerpt from NCAPA Citizen Planner Training Manual).
- Should there be a strict requirement that speakers only present substantial, competent, material evidence during the evidentiary hearing for a conditional use permit and not opinion.
- Who will be allowed to cross examine speakers and who can present testimony at the public hearing?

Re: Conditional Zoning – con't

There are several issues that need to be addressed as a result of the public hearing. Should a community meeting be required regardless of the type of zoning process? If so, who is required to be notified and what standards should apply to a community meeting report? Should the current conditional use process be maintained and if so, should it be evaluated and updated? In thinking about these issues it is worth considering the impacts that a community meeting could have on either process. Also, if the current quasi-judicial process is maintained, but more strictly followed, how would it impact the public's ability to comment on an application?

RECOMMENDATION: It is the Planning Department staff recommendation that a community meeting be added to either zoning process, with a requirement that only adjoining property owners are required to be notified. If the current conditional use zoning process is maintained it is recommended that the entire process be evaluated and that deficiencies are corrected.