



Conditional Zoning

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Background

- *State Statute changes from 153/160A to 160D for Zoning*
- *Many, many changes required in local ordinances*
- *Conditional Use Permits are no longer permitted*
- *Transitioning to Conditional Zoning on Attorney's Recommendation*
- *Reviewing Table of Permissible Uses at a future date, based on TC direction, to reassess which uses require additional scrutiny and which uses should be permitted by right*

CUP to SUP

- All references and procedures related to Conditional Use Permits are changed to Special Use Permits
- Procedures remain largely unchanged
- Quasi Judicial procedures are still used
- No uses are *required* to be handled by SUP



Legislative (Conditional Zoning) vs QJ (CUP/SUP)

	Legislative	Quasi Judicial
Notice of Hearings	Both newspaper notice and mailed notice to owners and neighbors are required. Additional Public Scoping Meeting	Only notice to parties to the matter is required unless ordinance mandates otherwise.
Speakers at Hearings	No limit based on standing, reasonable time limits	Witnesses presenting testimony can be limited to relevant evidence that is not repetitious.
Evidence	None is required	Substantial, competent, material evidence must be put in the record; witnesses are under oath, subject to cross-examination
Findings	None are required	Written findings of fact are required.
Records	Regular minutes are satisfactory	Detailed record of testimony is required; clerk should retain all exhibits during period of potential appeal.

Conditional Zoning (Legislative)	Conditional/Special Use Permits
Legislative Decision based on citizen input	Quasi-judicial decision based upon substantial, competent, and material evidence and citizens with standing
Broad discretion to approve or deny a proposal	Must approve proposal if burden of proof is met
Limited recourse following decision – elected board’s wisdom is not questioned	Decision commonly appealed to Superior Court
No limit on discussion of proposal prior to decision	No undisclosed ex parte communication
Limited conflict of interest concerns – financial and familial	Stringent conflict of interest provisions – financial, familial, ex parte, and impartial decision maker

Conditions

Beyond each district's limitations
or minimum required standards

Reasonable

- Signage
 - Location, number, size
- Traffic Impact Analysis
 - Design of access/infrastructure
- Design (not SFR/2FR)
 - Location of parking
 - External materials
 - Access
- Landscaping
 - Location and Size
- Buffers
 - Fencing
 - Landscaping
 - Open Space
- Uses
- Density
 - Number of units

Conditions

Unreasonable

- Price of sale
- Non-quantitative conditions
 - Setback/buffering without exact direction
 - Not “too many” signs
- Size – outside of existing zoning standards
- SFR/2FR Design Standards



Power to the People

- Whomever is voted into office will have more control over decision making
- People do not need to be experts or have standing



Questions?

Staff Recommendation

Amend Chapter 40, Article XVII, Sec. 40-527

- (1) It is recommended that Town Council open the public hearing for comments.
- (2) Close the public hearing
- (3) Consider approval or denial of the proposal and make a motion according to the appropriate statement.

New Statutory Requirements

The General Assembly amended G.S. 153A-341 and 160A-383 to add more specificity to the law regarding the mandated plan consistency statements. The amended statute still requires approval of a statement and the statement still must describe plan consistency and explain why the proposed action is **reasonable and in the public interest**. However, the form of the required statement has changed. The statement must take one of three forms:

- A Statement of Approval – The Council, whereas in accordance with the provisions of the NCGS 160A-383, does hereby find and determine that the adoption of a Text Amendment: To amend Chapter 40 Zoning, Article XVII, Sec. 40-527 to adopt conditional zoning, in the Town of Carolina Beach, it is consistent with the goals and objectives of the adopted Land Use Plan and other long-range plans. (If applicable - List any recommended restrictions or requirements)
- A statement approving the proposed amendment and declaring that this also amends the plan, along with an explanation of the change in conditions to meet the development needs of the community that were taken into account in the zoning amendment.
- A Statement of Denial – Town Council deny the adoption of the following ordinance amendment based on inconsistencies with the goals and objectives of the adopted Land Use Plan and/or other long range planning documents.

Action

Approval - whereas in accordance with the provisions of the NCGS, the Commission does hereby find and determine that the adoption of the following ordinance amendment to Chapter 40, Article XVII, Sec. 40-527 is consistent with the goals and objectives of the adopted Land Use Plan and other long-range plans or

- A statement approving the proposed amendment and declaring that this also amends the plan, along with an explanation of the change in conditions to meet the development needs of the community that were taken into account in the zoning amendment.

Denial - based on inconsistencies with the goals and objectives of the adopted Land Use Plan and/or other long-range planning documents.