



**CONSIDER LAND USE MANAGEMENT ORDINANCE TEXT AMENDMENTS – PROPOSED CHANGES TO ARTICLES 3, 5 AND THE APPENDIX A TO EXPAND CONDITIONAL ZONING DUE TO COVID-19 & STATE STATUTE 160D**

**STAFF REPORT**

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**AMENDMENT REQUEST**

Amend portions of Articles 3, 5, and the Appendix A of the Land Use Management Ordinance (LUMO) to 1) facilitate development applications delayed by COVID-19 due to concerns over quasi-judicial hearings in a virtual environment and 2) bring portions of the LUMO into compliance with 160D, which is the State legislation modifying the North Carolina statutes for development regulations.

**DATE**

October 28, 2020

**TOWN MANAGER’S REPORT AND RECOMMENDATION**

I have reviewed and discussed the key issues with Town staff. Based on the information in the record to date, I believe the Council can consider the factors required to approve the Ordinance amending the text of the Land Use Management Ordinance. Of the three factors for consideration listed below in the Process section, changing conditions and achieving the purposes of the Comprehensive Plan are most applicable. The proposed text amendments provide for the expanded use of conditional zoning as a regulatory tool, which facilitates development applications delayed by COVID-19 and brings portions of the LUMO into compliance with 160D.

Because the proposed text amendment is consistent with the Comprehensive Plan, I recommend that the Council adopt the Resolution of Consistency and enact Ordinance A.

**UPDATES SINCE THE PUBLIC HEARING**

Staff has not received additional comments since the Public Hearing.

After the public hearing, staff added Section 9 to the proposed Ordinance to facilitate applications constrained by the current rules governing quasi-judicial, virtual meetings. This Section amends Table 3.6.3-2, Permitted Uses within the Resource Conservation District, so that uses designated as “S” may be considered as part of a conditional zoning district application. Currently, such uses may only be considered as part of a Special Use Permit or a subdivision application.

**PROCESS**

The Council must consider the following **three factors** for enactment of the Land Use Management Ordinance Text Amendment:

1. To correct a manifest error in the chapter; or
2. Because of changed or changing conditions in a particular area or in the jurisdiction generally; or
3. To achieve the purposes of the Comprehensive Plan.

**KEY ISSUES**

- In response to the COVID-19 crisis, the State government created specific provisions for remote public meetings that became effective May 4, 2020 and remain in effect during the current State of Emergency.
- Under the new State provisions, quasi-judicial evidentiary hearings may only be held if all individuals who have standing are notified and provide written consent for a remote hearing. This requirement makes it very challenging to hold public hearings on a Special Use Permit (SUP) application since it is often difficult to determine standing before the public hearing takes place.
- Conditional Zoning is a review process that closely resembles Special Use Permit review. The legislative public hearings that are necessary for Conditional Zoning review face fewer obstacles under the new State provisions for virtual hearings.
- The proposed amendments will allow development applications to convert from the SUP quasi-judicial process to a legislative one, allowing them to be reviewed and considered using the Town’s established development review process. In addition, the proposed amendments will bring the affected LUMO provisions into compliance with the 160D legislation.

**CONSISTENCY WITH COMPREHENSIVE PLAN**

The proposed text amendment promotes the following Chapel Hill 2020 Comprehensive Plan goals:

- A community that welcomes and supports change and creativity (GPNS.6)
- A development decision-making process that provides clarity and consistency with the goals of the Chapel Hill 2020 comprehensive plan (GPNS.3)

**ATTACHMENTS**

1. Text Amendment Overview
2. Draft Staff Presentation
3. Resolution of Consistency (for proposed Land Use Management Ordinance amendment)
4. Ordinance A (Enactment of Land Use Management Text Amendment Proposal)
5. Resolution B (Deny Land Use Management Text Amendment Proposal)
6. Planning Commission Recommendation

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<sup>1</sup> [https://library.municode.com/nc/chapel\\_hill/ordinances/code\\_of\\_ordinances?nodeId=886103](https://library.municode.com/nc/chapel_hill/ordinances/code_of_ordinances?nodeId=886103)



## **PROPOSED CHANGES: TEXT AMENDMENTS TO THE LAND USE MANAGEMENT ORDINANCE ARTICLES 3, 5 AND THE APPENDIX A REGARDING EXPANDING THE USE OF CONDITIONAL ZONING**

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The following is a summary of the proposed text amendments necessary to expand conditional zoning in order to facilitate development applications challenged by State requirements on virtual quasi-judicial hearings and to bring portions of the LUMO into compliance with 160D.

### **TEXT AMENDMENT OVERVIEW**

- **Convert Two districts.** Prior to the Town’s adoption of conditional zoning, many development options and zoning districts required a Special Use Permit. Two such districts are the Residential-Special Standards-Conditional use district (R-SS-C) and the Mixed Use-Village district (MU-V). Most of the proposed amendments are necessary to convert these two districts to conditional zoning districts. The existing regulations for these districts are not changing except where necessary to make the conversion or to align provisions with other LUMO sections.
- **Special Uses. Additional amendments to facilitate the use of Conditional Zoning:**
  - Changes the definition of “S” in the Use Matrix, which is Table 3.7-1. This change allows uses defined as “Special Uses” in the Use Matrix, such as Drive-in windows, to be considered and permitted as part of a conditional zoning district application.
  - Changes the definition of “S” in the Permitted Uses within the Resource Conservation District table, which is Table 3.6.3-2, so such uses may be considered and permitted as part of a conditional zoning district application.
- **Create Two Parallel Districts.** 160D does not permit conditional use district zoning, which is the process of combining a rezoning with a special use permit. It does allow conditional zoning. Existing conditional use districts must convert to conditional zoning districts by December 31, 2020. When the Town established the conditional zoning districts that parallel existing general use zoning districts in [November of 2017](#)<sup>1</sup>, parallel districts were not created for all existing conditional use districts. To facilitate the necessary conversions, conditional zoning districts are created for all existing conditional use districts.

### **SUMMARY OF PROPOSED ORDINANCE**

#### **1. Section 2 – LUMO Section 3.4.1**

- Converts existing conditional use districts to conditional zoning districts and clarifies that any proposed changes to existing districts would be considered according to the provisions for conditional zoning districts

#### **2. Section 3 – LUMO Section 3.4.2 - R-SS-C**

- Converts the R-SS-C conditional use district to a conditional zoning district and provides direction on processing modifications for existing R-SS-C districts

#### **3. Section 4 – LUMO Section 3.4.3 – Conditional Zoning Districts**

- Expands the list of parallel conditional zoning districts
- Expressly creates two types of conditional zoning districts. Those that parallel existing general use districts and defined conditional zoning districts that include:

- The existing Light Industrial Conditional Zoning District (LI-

CZD);

- The proposed Residential Special Standards Conditional Zoning District (R-SS-CZD); and,
- The proposed Mixed-Use Village Conditional Zoning District (MU-V-CZD).

**4. Section 6 – New LUMO Section 3.4.5**

- Incorporates the existing objectives for the R-SS-C district into the proposed R-SS-CZD

**5. Section 7 – New LUMO Section 3.4.6**

- Incorporates the existing regulations for the MU-V district into the proposed MU-V-CZD

**6. Section 9 – Table 3.6.3-2**

- Changes the definition of “S” for the Table of Permitted Uses within the Resource Conservation District so that uses designated as “S” may be considered as part of a conditional zoning district request

**7. Section 10 – Table 3.7-1: Use Matrix**

- Converts R-SS-C to R-SS-CZD
- Changes the definition of “S” in the Use Matrix so that uses designated as Special Uses may be considered as part of a conditional zoning district request

**8. Sections 11 -15 – Changes to Multiple LUMO Tables/Sections**

- These changes relate to integrating R-SS-CZD and MU-V-CZD into various sections of the LUMO

**9. Section 16 – Appendix A - Definitions**

- Includes new clarifying definitions