

Staff Report



Overview

In order to permit greater dialogue between the Council and stakeholders when significant projects are proposed, Council enacted amendments to the Land Use Management Ordinance (LUMO) expanding the use of conditional zoning in November of 2017 and March of 2018. The Council spent time during those hearings considering whether to separate the rezoning process from the consideration of the Land Use Plan amendment when proposed projects were deemed consistent with the Land Use Plan. The general procedural guidance to the staff was to consider those actions in a linear manner. One year after enactment, there has been very little usage of the conditional zoning tool. The purpose of this item is to provide an update on its use and to discuss whether the current procedure reviewing Land Use Plan amendments (when required) concurrently with conditional zoning applications would make the conditional zoning tool more effective.

Background

- In the fall of 2017, the Town Manager initiated a Land Use Management Ordinance (LUMO) text amendment expanding conditional zoning to provide a development review tool that was outside of the quasi-judicial process in order to permit the Council to interact with stakeholders when development review applications were under consideration.
- On [November 29, 2017](#),¹ the Town Council adopted amendments to Articles 3 and 4 of the Land Use Management Ordinance (LUMO) expanding the usage of Conditional Zoning beyond the Light Industrial Conditional Zoning District.
- On [March 21, 2018](#),² the Town Council enacted additional amendments to Articles 3 and 4 clarifying procedures and establishing a link between the Town's Land Use Plan and conditional zoning district applications.
- The amendments enacted on November 29, 2017 and on March 21, 2018 took effect on April 1, 2018.

Recommendation

That the Town Council amend the administrative procedures to permit conditional zoning applications requiring a Land Use Plan amendment to be considered concurrently, rather than sequentially.

Key Issues

- When a proposed conditional zoning district also requires a Land Use Plan amendment due to inconsistency with the Land Use Plan, the existing practice is that the Land Use Plan be amended prior to receiving and considering the application for the proposed conditional zoning district. Should this policy continue or should the Land Use Plan amendment and the proposed conditional zoning district be considered concurrently?
- Applicant feedback during this first year is that the linear review adds time to the process, and they are therefore instead requesting a conditional use rezoning paired with a Special Use Permit or Development Agreement in situations that are aligned with the Council's interests

¹ https://chapelhill.granicus.com/MetaViewer.php?view_id=21&clip_id=3369&meta_id=181391

² <https://chapelhill.legistar.com/LegislationDetail.aspx?ID=3380245&GUID=895978B8-E22A-4041-8B57-2A77E461198E&Options=&Search=>

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for the utilization of conditional zoning.

Activity since April 1, 2018

Since the LUMO amendments for the expanded use of conditional zoning took effect on April 1, 2018. Staff has:

1. Created application forms;
2. Conducted internal training on both amending the Land Use Plan and conditional zoning districts; and,
3. Routinely discussed the conditional zoning tool with applicants.

However, in the time since it was authorized, only one conditional zoning district application has been received, which does not require a Land Use Plan Amendment.

Land Use Plan Amendment

As enacted, the LUMO requires a conditional zoning district to be consistent with the Land Use Plan. A proposed district is deemed consistent if the district is located in conformance with an adopted small area plan and/or in one of the following Land Use Categories:

Medium Residential
High Residential
Commercial
Mixed Use, Office/Commercial Emphasis
Mixed Use, Office Emphasis
Town/Village Center
Institutional
Office
University
Development Opportunity Area
Light Industrial Opportunity Area

When a proposed conditional zoning district is deemed inconsistent, the Land Use Plan may be amended by the Town Council. The LUMO states:

When considering such an amendment to the Land Use Plan, the town council shall review the record of the public hearing, the planning commission's recommendation and the town manager's report and shall approve or deny the application based on the following:

1. The proposed amendment is consistent with the goals and policies in the Comprehensive Plan;
2. The proposed amendment addresses significantly changed conditions since the last time the Land Use Plan was adopted and/or amended with significantly changed conditions being defined as demonstrating evidence of change such as unanticipated consequences of an adopted policy, and/or changed conditions on the subject property or its surrounding area;
3. The subject property is suitable for development in general conformance with adjacent land use and the existing surrounding development pattern or patterns as envisioned in

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- adopted plans; and,
4. The proposed amendment enhances the public health, safety, and welfare of the Town.

In response to the Council's interest in ensure that the Land Use Plan was only modified according to the standards above and not because of the merits of a particular application, the procedural process requires that the amendment to the Land Use Plan (if needed) be approved prior to consideration of the proposed conditional zoning district. After Council approval of a Land Use Plan amendment, an applicant can request the proposed conditional zoning district.

Since enactment, staff has discovered that applicants are disinclined to seek the Land Use Plan amendment for two main reasons:

1. Concern that the Town may be reluctant to approve a change to the Land Use Plan absent the specifics that accompany development applications; and,
2. The amount of time required to seek a Land Use Plan amendment and then apply for a conditional zoning district.

Due to the above concerns, applicants, who need a Land Use Map amendment, have opted to apply for a Conditional Use Rezoning paired with a Special Use Permit or are considering requesting a Development Agreement. With only one exception, which is the Habitat project on Sunrise Road, all of the prospective applications for a conditional zoning district, which need a Land Use Plan amendment, are located within the Focus Areas designated by *Chapel Hill 2020*, but are designated Low Residential on the Land Use Plan.

This resistance to the tool, as currently structured, has hampered the Council's interests, as expressed during the public hearings prior to passage, to encourage more proposed development projects to use a process that facilitates greater stakeholder dialogue. As a result, staff is recommending that the applicants be permitted to seek Land Use Map amendments concurrently with conditional zoning district applications. This approach would permit full project information to be considered at the time the Land Use Plan amendment is requested and would also be consistent with how the Town has traditionally evaluated applications.

When the Council discussed the expansion of conditional zoning in 2018, concerns were expressed that conditional zoning would be proposed in locations that might be inappropriate, such as residential neighborhoods. To help insure compatible development, the link to the Land Use Plan was created and the sequential procedure was established so that Council could evaluate substantive land use changes in a holistic manner. This change would not preclude this holistic consideration and would not alter the need to consider proposed Land Use Plan amendments, according to the above standards. In practice, this change would mean that the Council could consider both a proposed Land Use Plan amendment and a proposed conditional zoning district in the same meeting.

Conclusion

Because conditional zoning is a legislative act, rather than a quasi-judicial one, Council may discuss the rezoning application and project with all stakeholders outside of a public hearing and take into consideration the relevant comments at the public hearing. For the reasons stated above,

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the conditional zoning tool has not been fully utilized, and consequently, Council has not been able to take advantage of the expanded discourse permitted by conditional zoning. Consequently, staff is recommending that the existing administrative procedure be amended to permit Land Use Plan amendments, when necessary, to be considered concurrently with the proposed conditional zoning district.