

ZTA19-05

Zoning Text Amendments to the Unified Development Ordinance (UDO)



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5.16.4 ZONING MAP AMENDMENT PROCESS-PARALLEL CONDITIONAL USE DISTRICTS (PCUP)

A. Purpose

1. The parallel conditional use rezoning process allows particular uses to be established, but only in accordance with a specific development project. Some land uses are of such a nature or scale that they have significant impacts on both the immediate surrounding area and/or on the entire community that cannot be predetermined and controlled by general district standards or the criteria governing planned developments. There are also circumstances in which a general district designation allowing such a use by right would not be appropriate for a particular property even though the use itself could, if properly planned, be appropriate for the property and be consistent with the objectives of these regulations, the adopted land use plan, and other plans for the physical development of the County as adopted by the governing board. ~~The review process established herein provides for the accommodation of such uses by a reclassification of property into a "parallel conditional use" district.~~ This process was formerly established to provide accommodations for such uses by reclassifying the property into a "parallel conditional use" district. With the adoption of Resolution 2019-XXX, parallel conditional use districts are no longer offered as an expedited means of review and/or approval of a zoning map amendment and issuance of a conditional use permit. Any and all PCUP's approved prior to the adoption of the aforementioned Resolution are to be considered valid zoning districts with binding conditional uses as specified with the respective case documents.
2. ~~The "parallel conditional use" district (PCUP) approval process is established to address those situations when a particular use may be acceptable but the general zoning districts which would allow that use would not be acceptable. Such zones may be approved or changed only by the Board of Commissioners in accordance with the regulations contained herein. (NOTE: Conditional Use Permits not associated with a Parallel Conditional Use District rezoning request may be issued by the Board of Adjustment. Refer to Section 5.11 for more information.)~~
3. ~~In order for a property owner to secure privileges for developing property under the parallel conditional use process, a two-step process must be followed. The property must first be rezoned by the Board of Commissioners to a parallel conditional use district. The Board of Commissioners must then approve a conditional use permit which may contain fair and reasonable conditions to assure conformance with this Ordinance, other plans adopted by the Board of Commissioners and compatibility with surrounding properties. Any use permitted under this process also must conform to the development regulations for the corresponding general zoning district. Thus, if a property were rezoned to a "CU / R 1" conditional use district, and a conditional use permit approved authorizing the development of a particular use, that use must: (i) be a use allowed in the R-1 district, (ii) meet all dimensional, screening and related requirements of the R-1 district, (iii) meet any listed supplemental~~

requirements for that particular use in the R-1 zoning district, and (iv) meet any additional requirements placed by the Board of Commissioners on the conditional use permit.

4. ~~Rezoning of property to any PCUP parallel conditional use district is a voluntary procedure on the part of the property owner and is intended for firm development proposals. A PCUP district application may not be initiated by the Board of Commissioners, Planning Board, administrative staff, or a third party with no ownership interest in the subject property. Furthermore, it is not intended or suited for securing early zoning for a tentative proposal that may be undertaken at some unknown time in the future.~~
5. ~~In order for a property owner to secure development privileges in accordance with the regulations contained in this Chapter, the Board of Commissioners must first rezone said property to a particular PCUP district and then Board of Commissioners must issue a conditional use permit allowing the particular development to take place.~~

~~B. —~~ **Reclassification Required**

~~No (PCUP) parallel conditional use district and associated conditional use permit shall be established until the owner of the property in question (or his authorized agent) proposing the district has submitted an application for the rezoning of the property and issuance of a conditional use permit, and Board of Commissioners has approved such application in accordance with the procedures stated herein.~~

~~C. —~~ **Plans and Other Information to Accompany Petition**

1. ~~Every application for the rezoning of property to a parallel conditional use district and issuance of a conditional use permit shall be accompanied by a site plan, drawn to scale containing all of the information outlined in Section 5.11.2(B) of this Ordinance.~~
2. ~~Furthermore, no application shall be considered complete unless it is accompanied by a fee, in accordance with a fee schedule approved by the Board of Commissioners for the submittal of an application for rezoning to a PCUP district and issuance of a conditional use permit. Said fee shall be waived for any application submitted by any official or agency acting on behalf of Gaston County, or the State of North Carolina~~

~~D. —~~ **Public Hearing Notification Requirements**

1. ~~Before any property is rezoned to a PCUP district and a conditional use permit issued, the Planning Board shall have had an opportunity to review and make a recommendation on the application. Such Planning Board review shall take place after a~~

~~joint public hearing held by the Planning Board and the Board of Commissioners. Any complete application shall be submitted to the Administrator at least forty five (45) working days prior to the public hearing. Notification of the public hearing shall be as follows:~~

- ~~a. A notice shall be published in a newspaper having general circulation in Gaston County once a week, for two (2) successive weeks, the first notice to be published not less than ten (10) days nor more than twenty five (25) days prior to the date established for the joint public hearing.~~
- ~~b. A notice of the proposed zoning map change shall be sent at least ten (10) days prior to the Planning Board/Board of Commissioners' public hearing by first class mail by the Administrator to the applicant and to owners of all adjacent properties as indicated on the most up to date records of the Gaston County Tax Department.~~
- ~~c. The Administrator shall post at least one notice on the site proposed for rezoning or an adjacent public street or highway right of way at least ten (10) days prior to the Planning Board/Board of Commissioners' public hearing. Where multiple parcels are included within a proposed zoning map amendment, a posting on each individual parcel is not required, but the County shall post sufficient notices to provide reasonable notice to interested persons. Such notice shall state the case number, the public hearing date and time which it is to be held and contact telephone number. The notice shall be removed only after final action has been taken on the matter.~~

- ~~2. Any public hearing notice published or mailed shall state the nature of the public hearing, the date, time, and place at which the hearing is to occur, and who to call and/or see for more information.~~

~~E. Planning Board Review / Action~~

~~The Planning Board shall have thirty (30) days to make a recommendation on the proposed change, said thirty (30) days being measured from (date of the closing of the joint Board of Commissioners / Planning Board public hearing. If a recommendation is not made during said time period, the application shall be forwarded to the governing board without a recommendation. Any such Planning Board recommendation shall be accompanied by statements that address: (i) whether the proposed map amendment is consistent with any comprehensive plan that has been adopted by the governing board and any other officially adopted plan that is applicable, and (ii) other matters that the Planning Board deems appropriate, and (iii) why it considers the action taken to be reasonable and in the public interest.~~

~~F. Final Action~~

- ~~1. Conduct of Public Hearing~~

- a. ~~The joint Planning Board and Board of Commissioners public hearing shall be held in a quasi judicial manner. Once the public hearing is opened, it may be continued to a later date. Any such public hearing shall consider information relating both to the zoning of a piece of property to a PCUP district and the issuance of a conditional use permit. That notwithstanding, the decision to rezone property to a PCUP district shall be legislative in nature. The decision to issue a conditional use permit shall be quasi judicial in nature. In approving an application for a conditional use permit, the Board of Commissioners may attach fair and reasonable conditions to the approval that are mutually approved by the County and the petitioner. Such conditions shall be limited to those that address the conformance of the development and use of the site to County ordinances and an officially adopted comprehensive or other plan and those that address the impacts reasonably expected to be generated by the development or use of the site. The petitioner will have a reasonable opportunity to consider and respond to any additional requirements prior to approval or denial by the Board of Commissioners. In no instance shall any of these conditions be less restrictive than any requirements that would pertain to that particular development found in the zoning district in which the property is located. Such conditions may exceed any performance criteria or minimum requirements listed elsewhere in this Ordinance that pertain to that development. Statements that: (i) analyze whether the rezoning is consistent with an adopted comprehensive plan and any other officially adopted plan, and (ii) other matters that the Board of Commissioners deems appropriate and (iii) why it considers the action taken to be reasonable and in the public interest shall be prepared and accompany each final decision relative to the PCUP rezoning request.~~

~~2. Parallel Conditional Use District Burden of Proof~~

- a. ~~The applicant has the burden of producing competent, material and substantial evidence tending to establish the facts and conditions that Subsections b(ii) and b(iv) below require. If any person submits competent, material, and substantial evidence allegedly contrary to any of the facts or conditions listed in Subsections i and iii below, the burden of proof for overcoming such evidence shall rest with the applicant.~~
- b. ~~The Board of Commissioners may only issue a conditional use permit if it has evaluated an application and found each of the following findings of fact in the affirmative:~~
 - i. ~~The use will not materially endanger the public health or safety if located where proposed and developed according to plan;~~
 - ii. ~~The use meets all required conditions and specifications;~~
 - iii. ~~The use will not substantially injure the value of adjoining or abutting property unless the use is a public necessity; and~~

- iv. ~~The location and character of use, if developed according to the plan as submitted and approved, will be in harmony with the area in which it is to be located and will be in general conformity with the adopted Land Use Plan and other plans for the physical development of the County as adopted by the Board of Commissioners.~~

~~G. — Additional Review Criteria~~

~~In addition to the findings of fact listed immediately above certain uses require the consideration of additional review criteria. Before a conditional use permit may be issued for said uses, the findings of fact listed immediately above along with those pertaining to that individual use must each be found in the affirmative.~~

~~H. — Effect of Approval~~

- ~~1. — If a petition for a PCUP rezoning and conditional use permit are both approved as herein provided, the district that is established, the approved conditional use permit, and all conditions that may have been attached to the approval are binding on the property as an amendment to the Zoning Map. Subsequent development on the property in question shall be in accordance with the standards for the approved PCUP district, the conditional use permit, and any conditions attached to the approval. The applicant shall be responsible for all expenses involved in the dedication of rights of way when such dedication is a condition of the conditional use permit.~~
- ~~2. — Whenever a petition for PCUP zoning has been approved and a conditional use permit granted, the County shall file and record a copy of the PCUP in the office of the Register of Deeds for Gaston County.~~
- ~~3. — Following the approval of the petition for a parallel conditional use district, the subject property shall be identified on the zoning map by the appropriate district designation. A parallel conditional use district shall be identified by a general zoning district classification preceded by the letters PCUP (for example, "CU / R-1").~~

~~I. — Binding Effect~~

- ~~1. — Changes to the approved PCUP petition or to the conditions attached to the approval shall be treated the same as an amendment to the zoning map and shall be processed in accordance with the procedures contained in Section 5.16.4.~~
- ~~2. — Except as provided below, any conditional use permit herein authorized shall be perpetually binding to the property included in such permit unless subsequently changed or amended by the Board of Adjustment. However, minor changes in the detail of the approved application may be approved by the Administrator. A "minor change" to the approved conditional use permit shall be deemed to be a change which:~~

- a. ~~Will not alter the basic relationship of the proposed development to adjacent property;~~
- b. ~~Will not increase the gross floor area of any nonresidential use by the smaller of ten (10) percent or ten thousand (10,000) square feet (**NOTE:** Such limitations shall be cumulative and shall be based on the gross floor area of the conditional use permit as originally approved);~~
- c. ~~Will not decrease the off street parking ratio below the minimum number of parking spaces required by this chapter or reduce the yards provided at the perimeter of the site by the lesser of ten (10) feet or ten (10) percent;~~
- d. ~~Will not increase the height of any structure to the extent that additional usable floor space could be added;~~
- e. ~~Will not result in an increase in the number of dwelling units constructed; or~~
- f. ~~Will not alter the uses permitted.~~

J. ~~Period of Validity of Conditional Use Permit~~

1. ~~Unless the Board of Commissioners issues a parallel conditional use permit which either is specifically exempt from any time constraints or has some other specified time period for implementation, the applicant must secure a valid building permit (or certificate of compliance) within twenty four (24) months from date of issuance of the parallel conditional use permit. If a building permit or certificate of compliance is not issued at the end of said time period, the parallel conditional use permit shall automatically expire and shall be deemed rescinded. Such rescission shall not occur if the applicant has secured the vesting of a site development plan (in accordance with Section 5.10) for a period of greater than two (2) years.~~
2. ~~If the parallel conditional use permit is rescinded, the County shall immediately take steps to rezone the property to a general zoning district.~~

K. ~~Application Submission Period~~

~~Any completed application submitted shall be heard by the appropriate Board for approval within one hundred eighty (180) days from the date of submittal. After the expiration of an application, a new application may be submitted following the current regulations in place at the time of the new application submittal.~~

NOTE: If approved, all references to the PCUP throughout the UDO, will be removed and/or amended (when referencing applications that have been approved prior to the adoption of this amendment).