

**ATTACHMENT TWO:**

*(STAFF COMMENT: This is intended to be a definition section identifying the purpose and intent of the Conditional Use process)*

**Section 50-85            Conditional Use**

**Issue:** This ordinance contains regulations that establish zoning districts and assign land uses to one (1) or more of these districts. The ordinance also provides standards for development that regulate lot size, yards, parking and open space.

There are, however, certain circumstances that arise when:

- a. A general zoning district designation would not be appropriate for a certain property, but a specific use permitted under the district would be consistent with the objectives of this ordinance,
- b. There may be situations where a planning study, completed by the Orange County Planning Department and approved by the Orange County Board of Commissioners, indicates that there may be opportunities to allow for specific classifications of development within a specific geographic area of the County that is not located within appropriate Land Use Categories to allow for a general use rezoning to occur, or
- c. Certain uses or groups of uses that, because of their nature or scale, have particular impacts on both the immediate area and the community as a whole and cannot be predetermined or controlled by general use district standards.

**Section 50-85.1        Purpose and Intent:**

In order to accommodate these situations, the County has created Conditional Use Districts allowing the Board of County Commissioners to:

- a. Approve a rezoning proposal for a specific, defined, use,
- b. Promote economical and efficient land uses within the urbanizing and rural areas of the County,
- c. Allow for the imposition of reasonable conditions to minimize off-site impacts and to assure the compatibility of proposed land uses with surrounding properties,
- d. Require a higher level of amenities that are appropriate and harmonious with the area,

- e. Encourage a variety of initiatives designed to encourage developments to incorporate appropriate smart-growth principles within the physical development and design of a proposed development to secure an improved living and working environment, and
- f. Allow for the master planning of infrastructure development within the region.

This is a voluntary procedure that is intended for firm development proposals. It is not intended or suited for securing early zoning for tentative proposals that may not be undertaken for some time.

**Section 50-85.2      Types of Districts:**

For the purposes of this Ordinance, the following Conditional Use Districts (CUD) are hereby established and permitted for development within the County subject to established parameters as detailed herein:

- a. Agricultural Support Enterprises (ASE),
- b. Rural Economic Development Area (REDA),
- c. Transit Oriented Development (TOD),
- d. Airport (AP), and
- e. Planned Development (PD)

**Section 50-85.3      Definition of CZD Districts:**

- a. Agricultural Support Enterprises (ASE) (*Staff Note: This is a placeholder.*)
- b. Rural Economic Development Area (REDA) (*Staff Note: This is a placeholder.*)
- c. Transit Oriented Development (TOD) (*Staff Note: This is a placeholder. As we continue our review of the various opportunities associated with TOD standards, we may find that it would be more appropriate to define such developments as Planned Development as contained herein rather than have an independent section under the Conditional Use designation.*)
- d. Airport (AP) (*Staff Note: This is a placeholder. Currently, we allow Airports and other similar land uses to be developed upon approval of a Class A Special Use permit application. Staff would ultimately like to recommend that we make airports and other similar development reviewed and approved under the Conditional Use District process. The rationale for the change is that it would be easier for the County to take into consideration impacts the project would generate on adjacent properties and allow the County to deny a request based on*

*those perceived impacts. Under the Special Use Permit process, if the applicant can demonstrate compliance with the established standards, and those opposing the project cannot provide substantial evidence to show the contrary, the County is obligated to issue the permit)*

- e. Planned Development (PD) (**Staff Note:** *This section will incorporate existing PD developments so that we do not make them nonconforming by eliminating the PD designation altogether. As staff sees it there will still be a need for a Special Use Permit to be issued as part of the process)*)

The Planned Development (PD) is established in order to accommodate the development of planned communities that may incorporate a full range of housing types and, in some instances, compatible nonresidential uses that provide goods, services, and employment primarily to serve the residents of the planned community.

PD districts may also allow for the development of large-scale non-residential development within appropriate development areas of the County, specifically:

1. Transition Areas,
2. Economic Development Areas,
3. Commercial and/or Industrial Nodes,
4. Rural Community and or Neighborhood Nodes, and
5. Other similar areas as defined within the Comprehensive Plan and detailed on the Land Use Element Map (LUEM).

In order to encourage high quality design and innovative arrangement of buildings and open space uses throughout the project, these districts provide substantial flexibility from the conventional use and dimensional requirements of the general districts.

PD districts are different than other CUD's in that the review and approval of such districts requires the simultaneous issuance of a Class A Special Use Permit in accordance with the provisions of this Ordinance. Development within a PD district includes, but is not limited to, the following types of projects:

1. Major Subdivision, Rural Designated, proposing forty-one (41) or more individual lots,
2. Major Subdivision, Urban Designated, proposing eighty (80) or more lots,

3. Economic Development (ED) projects designated as PD districts or where a petitioner proposes to modify existing development criteria,
4. Any development proposing to modify existing development standards as part of the process.

**Section 50-85.4**

**Development Criteria:**

Development of Conditional Districts shall be in accordance with the standards and procedures detailed within this Ordinance.

**50-161 (E): CONDITIONAL USE DISTRICTS:**

*(STAFF NOTE: The majority of these standards are taken from Article Seven (7) Planned Developments of the Ordinance. Modifications have been made in instances where we are dealing with a rezoning petition for a floating zoning district or the processing of a Planned Development application which will still involve the simultaneous review of a Class A Special Use Permit)*

**50-161 (E) (1) Permitted/Special Uses and Development Requirements:**

Potential uses, which may be considered for a CUD request, are restricted to those permitted and special uses consistent with the individual zoning districts as outlined within this Ordinance.

If the application made for a CUD designation calls for the development of a Special Use, the processing of the request shall be in compliance with the provisions of this Article. Unless otherwise indicated, all Planned Development CUD applications are required to apply for both a rezoning and Class A Special Use permit.

**50-161 (E) (2) Conditional Use Districts – Joint Planning Areas:**

CUD developments may be used in all areas covered by the Joint Planning Agreement among Orange County, the Towns of Carrboro and Chapel Hill and the Orange Water and Sewer Authority. The CUD development technique may also be used in the University Lake, Cane Creek and part of the Upper Eno Watershed areas, to protect these important water supply reservoir areas from degradation.

**50-161 (E) (3) Conditional Use Districts – Development within the Rural Buffer Zoning District:**

Development of CUD's within the Rural Buffer (RB) zoning district, as defined within this Ordinance, shall be limited to institutional or professional services (i.e. veterinarian, doctor, dentist, etc). Under no circumstances will a commercial/retail/office land use be allowed to be developed within the RB zoning district.

*(STAFF NOTE: A concern was expressed by a County Commissioner that the Conditional Use permitting process could allow for non-residential development within the Rural Buffer zoning district. To address that concern, we have provided this section to outline the limitations on Conditional Use development for placement within the UDO. Staff requests your thoughts on this issue as it could impact the proposed Agricultural Services program that we have been trying to adopt for several years now).*

**50-161 (E) (4) Conditional Use Districts – Relationship to Comprehensive Plan and Small Area Plans:**

CUD districts shall be so related to the general development pattern and the objectives of the Comprehensive Plan, and any relevant adopted Small Area Plans, as to provide for:

- i. The comfort and convenience of residents,
- ii. To facilitate protection of the character of surrounding neighborhoods, and
- iii. To reduce automotive traffic congestion by a reasonably close relationship (either in distance or in time) between origins and destinations of persons living, working or visiting in such developments, or by availability of mass transit.

Housing, commercial and service facilities and principal places of employment shall be so related by physical proximity, by major street networks, or by mass transit as to promote these objectives.

Within CUD districts, regulations adapted to such unified planning and development are intended to accomplish the purposes of zoning and other applicable regulations to an equivalent or higher degree than where such regulations are intended to control unscheduled development on individual lots, and to promote economical and efficient land use, and improved level of amenities, appropriate and harmonious variety, creative design and a better environment.

#### **50-161 (E) (5) Relation to Major Transportation Facilities**

CUD districts shall be so located with respect to Interstate highways, arterial and collector streets or mass transit facilities, and shall be so designed as to provide direct access to such districts without creating traffic along minor streets in residential neighborhoods outside the district.

#### **50-161 (E) (6) Relation to Public Utilities, Facilities and Services**

CUD districts shall be so located in relation to sanitary sewers, waterlines, storm and surface drainage systems and other utility systems and installations that neither extension nor enlargement of such systems will be required in manner, form, character, location, degree, scale or timing in a manner resulting in higher net public cost or earlier incursion of public cost than would development in forms generally permitted under current zoning and development policies for the area.

CUD districts shall be so located with respect to necessary public services and facilities as to have access to such facilities in the same degree as would development permitted under existing zoning and shall be so located, designed and scaled that access to public services is equivalent to, and net cost for such services for development as permitted under existing development controls.

However, if the applicants agree to:

- (a) Provide private facilities, utilities and services approved by appropriate public agencies as substituting on an equivalent basis, and assure their satisfactory continuing operation, permanently or until similar public utilities, facilities or services are available and used, or

- (b) Make provisions acceptable to the County for off-setting any added net public cost or early commitment of public funds made necessary by such development, location of the PD districts may be approved.

In computing net public costs, differences in anticipated public installation, operation and maintenance costs and differences in anticipated public revenue shall be considered. The applicants shall pay expenses involved in making such determinations. Determinations shall be made by the County or by experts acceptable to the County.

**50-161 (E) (7) Physical Character of the Site; Relation to Surrounding Property:**

The site proposed for development under the CUD process shall be suitable for development in the manner proposed without hazards to persons or property, on or off the tract, free from the probability of flooding, erosion, subsidence or slipping of the soil or other dangers. Condition of soil, ground water level, drainage and topography shall all be appropriate to both the kind and pattern of use intended.

**50-161 (E) (8) Processing of CUD applications:**

Petitions requesting authorization to establish a CUD shall be submitted to the Zoning Officer and will be processed in accordance with the procedure(s) for:

1. Zoning Atlas amendment,
2. Class A Special Use Permit (if applicable or if the application of for a Planned Development district),
3. The procedures for site plan review and approval contained within this Ordinance, and
4. The provisions of this Section.

A CUD application shall only be considered if the owner of the property, or his/her authorized agent, makes the application. All applications shall be completed on forms provided by the Orange County Planning Department

**50-161 (E) (9) CUD Applications Submittal Requirements:**

- (a) In conjunction with a CUD application, an applicant shall also be required to submit the following additional information:
  1. A Site Specific Development plan prepared in accordance with the provisions of this Ordinance including the following:
    - a. A detailed description of the proposed use of property including an outline of the proposed operational characteristics of the proposed development and the number, and specific location, of all proposed structures,

- b. A detailed water survey outlining the amount of water usage that will be generated by the proposed land use shall be completed for all CUD projects in accordance with any and all applicable Orange County Health Department – Environmental Health requirements or standards,
  - c. A detailed traffic survey, regardless of the estimated number of trips per day, shall be completed for all CUD projects in accordance with any and all applicable North Carolina Department of Transportation (NC DOT) requirements or standards as well as Article Thirteen (13) Traffic Impact Study of the Ordinance, and
  - d. An Environmental Impact Study shall be completed in accordance with Orange County regulations for all CUD projects.
  - e. The proposed screening, buffers, and landscaping over and above that required by these regulations, as well as proposed treatment of any existing natural features;
  - f. The location of significant trees on the subject property;
2. The scale of buildings relative to abutting property including building elevations and architectural standards;
  3. The general solutions concerning the provision of utilities including processing of wastewater;
  4. The general arrangement of common facilities such as open space, shared facilities, etc.;
  5. A schedule of construction of all elements of the proposal;
  6. The exterior features of the proposed development; and
  7. Any other information identified by Staff during the pre-application conference deemed essential to demonstrate the project’s compliance with these regulations.

(b) **Specific Site Plan Submittal Requirements:** In addition on the requirements outlined above, each application for CUD approval shall be required to submit any and all detailed specific site plan information contained within this Section.

(c) **Additional Requirements.** It may be necessary to request additional information in order to evaluate a proposed use and its relationship to the surrounding area. Therefore, the Planning Board and/or County Board of Commissioners may request additional information as they deem necessary to properly process a CUD request.

**50-161 (E) (10) Neighborhood Information Meeting:**

Before a Public Hearing may be held on an accepted petition for a CUD application, the petitioner is required to schedule, with the assistance of Planning Staff, at least one (1)

neighborhood information meeting. The purpose of this meeting is to obtain surrounding property owner input and comments on the proposed development project.

The applicant shall obtain addressing information from the Orange County Land Records department and mail certified notices of the meeting date and time to each property owner within five hundred (500) feet of the subject property to be rezoned. These notices are required to be mailed at a minimum of fourteen (14) days prior to the date of the proposed Neighborhood Information Meeting.

The Neighborhood Information Meeting shall be held a minimum of fourteen (14) days prior to the date of the Quarterly Public Hearing where the application is intended to be reviewed.

**50-161 (E) (11) Review and Evaluation of CUD applications:**

(a) In evaluating an application for the establishment for a CUD, it is appropriate for the County Board of Commissioners to consider the following:

1. The policies and objectives of the Orange County Comprehensive Plan, particularly in relation to the use, proposed site, and surrounding area;
2. The policies and objectives of any and all adopted Small Area Plans relating to the area;
3. The potential adverse impacts to the surrounding area of, but not limited, to: traffic, storm water drainage, land values, and compatibility of land use activities.

(b) In considering an application for the establishment of a CUD, the County Board of Commissioners may attach reasonable and appropriate conditions to the location, nature and extent of the proposed use. Any conditions should relate to the relationship of the proposed use to:

1. The characteristics of the proposed use and its relationship to surrounding property and existing land uses,
2. The proposed support facilities such as parking, screening and buffer areas,
3. The timing of the proposed development,
4. Architectural review and controls requiring the incorporation of smart-growth initiatives,
5. The Permitted and Special Uses allowed under the existing zoning classification, and,
6. Other matters that the Board may find appropriate or the petitioner may propose.

- (c) Only those conditions mutually agreed upon by the County and the petitioner may be incorporated into the zoning regulations or special use permit requirements. The petitioner shall agree in writing to all applicable conditions prior to a final approval of the application.

**50-161 (E) (12) Approval and Imposing Conditions on CUD proposals:**

The Board of County Commissioners, its agencies, or the petitioner may impose propose such conditions upon approval of a Special Use Permit for a Planned Development District as will afford

1. Conformance of the development and use of the site to County ordinances, the officially adopted Orange County Comprehensive Plan, any adopted Small Area Plan relevant to the Property and any other relevant adopted plan.
2. Those conditions that address the impacts expected to be generated by the development or use of the site.

Only those conditions mutually agreed upon by the County and the petitioner may be incorporated into the zoning regulations or special use permit requirements. The petitioner shall agree in writing to all applicable conditions prior to a final approval of the application.

**50-161 (E) (13) Approval of a CUD requiring a Special Use Permit.**

If a petition for a Planned Development, or the approval of a request involving a special use, is approved the County Board of Commissioners will issue the special use permit authorizing the development of the approved use. The permit, including all imposed conditions, shall only become effective after being duly recorded in the Orange County Register of Deeds. Failure by the petitioner to record the permit within one hundred eighty (180) days from the date of approval shall cause the permit to be deemed null and void.

**50-161 (E) (14) Effect of Approval.**

If an application is approved the CUD that is established, and all conditions that may have been attached to the approval, are binding on the property. All subsequent development and use of the property shall be in accordance with approved plan and conditions. The intent of this type of zoning is to provide an alternative procedure for specific development proposals. It is intended that all property be rezoned only in accordance with firm plans to develop.

**50-161 (E) (15) Alterations to an approved conditional use projects.**

Changes to approved plans and conditions of development will be treated the same as changes to the zoning map and will be processed as an amendment as provided for in this Ordinance.

Minor changes in the detail of the approved plan that:

1. **Will not** alter the basic relationship of the proposed development to adjacent property,
2. **Will not** alter the land uses approved by the County,
3. **Will not** increase the density or intensity of development, and
4. **Will not** decrease the off-street parking ratio or reduce the yards provided at the boundary of the site

The Planning Director may approve such changes without going through the amendment process. The Planning Director, at his/her discretion, may elect not allow any proposal as a minor change and will, in that event, forward the detailed application for changes to the Planning Board and County Board of Commissioners for their consideration.

#### **50-161 (E) (16) Zoning Map Designation.**

Following County Board of Commissioners approval of a CUD application, the property so zoned will be identified on the zoning maps by the appropriate parallel CUD designation. This designation is the general zoning district designation plus the letters "CU".