

Conditional District Fact Sheet

This fact sheet explains the submittal and review process for a rezoning to a Conditional Zoning District. It also covers how a decision on a request is made and how you can participate.

1. What is a Conditional District?

The Orange County Unified Development Ordinance (UDO) contains regulations that establish zoning districts and assign land uses to one or more of these districts. The UDO also provides standards for development that regulate lot size, yards, parking, landscaping, open space management, and other aspects of land use planning. However, there are certain circumstances when:

- (A) A conventional district designation would not be appropriate for a certain property, but a specific land use permitted within the district would be consistent with the objectives of the UDO and/or the adopted Comprehensive Plan,
- (B) A planning study, adopted by the Board of County Commissioners, indicates 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 conventional district rezoning to occur,
- (C) Certain uses, groups of uses, or types of development 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 conventional district standards, or
- (D) A property owner proposes the development, adoption, and imposition of unified development standards associated with the approval of a master development plan for a specific parcel of property that may or may not involve proposed modification of existing development regulations.

In these circumstances, a Conditional District may be utilized. Through this process, applicants propose development standards to address a project's potential impacts (i.e. lot size, setbacks, parking, landscaping, open space management, allowable building area, preservation of natural areas, etc.).

If approved, the use of the property would be subject to conditions created during the process.

2. What are the benefits of the CD process?

The process allows for more flexibility than other zoning tools.

Rules in a general zoning district are applicable to all uses without any special considerations. Rules for a Special Use Permit require all the individualized considerations be written in the ordinances beforehand.

By allowing for special considerations to be determined at the time of application, the CD process is thought to be a more prudent use of time, money, effort, and other resources.

3. Is a CD the same as a Special Use Permit?

No. With a SUP the County has determined potential development impacts of a given land use requiring special consideration of site-specific conditions against a set of established standards. An SUP is said to be a 'quasi-judicial' decision because how facts are applied to these established standards.

A CD project is said to be a 'legislative' decision because the standards are both established and applied at the time of the decision.

4. Are CDs and SUPs reviewed in a similar manner?

No. CDs are reviewed through the 'legislative' review process while an SUP is reviewed under the 'quasi-judicial' review process, further broken down as follows:

- **LEGISLATIVE:** Decisions are made based on multiple factors including the proposal's consistency with the adopted Comprehensive Plan, recommendations made by the Planning Board and staff, comments received from the public (both for and against a project), as well as the elected officials' experiences, opinions and judgment.

This is the most common review process employed by the County and is used to review multiple development proposals (i.e. zoning atlas amendments, amendments to the UDO, review/action on subdivision proposals, etc.).

- **QUASI-JUDICIAL:** Typically used to review land use development applications, commonly called a Special Use.

In this process, the board responsible for rendering a decision acts much like a panel of judges, hearing factual evidence and sworn testimony.

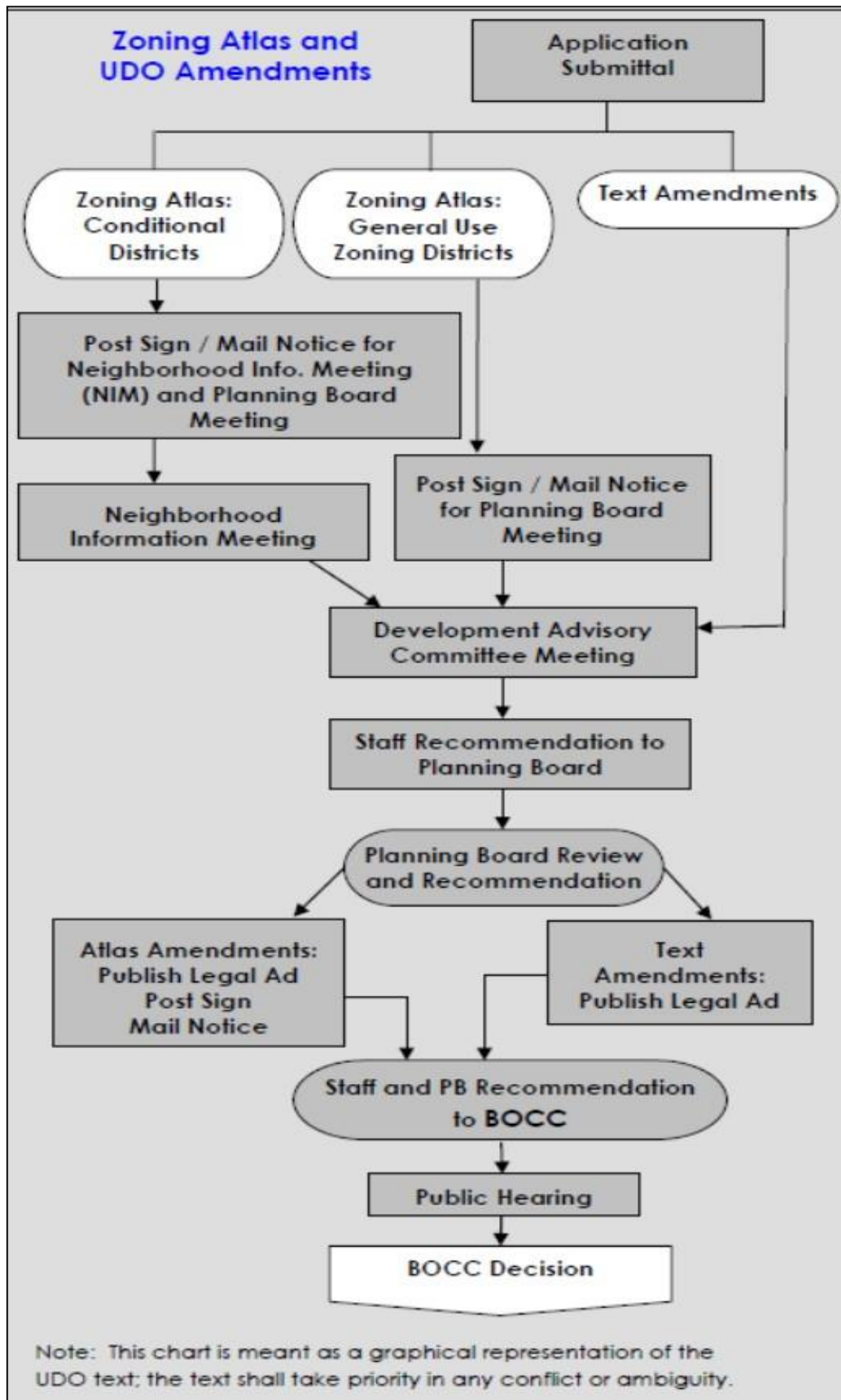
Decisions on whether a permit request must be issued or not are based on the competent, substantial, and material evidence presented by all sworn parties with standing.

5. How are CD application reviewed?

Review of a CD application occurs in multiple steps as outlined in the UDO summarized as follows:

- An application for a zoning atlas amendment is submitted;
- The proposal is reviewed by the County's Development Advisory Committee (DAC), which is essentially an internal staff review across multiple Departments (i.e. Building Inspections, Environmental Health, Emergency Services, Erosion Control/Stormwater, Solid Waste, etc.) and includes many technical advisors from external agencies such as the NC Department of Transportation (NC DOT);
- The next step is the scheduling and holding of a Neighborhood Information Meeting (NIM), which is an opportunity for the developer to discuss their proposal with the local community and for County staff to review/discuss the review process;
- The proposal is then reviewed by the Planning Board, which is an advisory group of County residents. The Board reviews the proposal, hears comments from the staff/applicant/general public, and makes a recommendation to the Board of County Commissioners (BOCC) for or against any proposal.
- The final step is with a public hearing before the BOCC. The public hearing allows the public to voice their opinions to the Commissioners. After the public hearing is closed, the BOCC then makes their decision.

This flow chart from the UDO helps illustrate:



- 6. Are applicants required to submit site specific development plans for a CD proposal?**
Either a site specific development plan or a concept plan will be required depending on the type of request.

Site specific development plans are meant to demonstrate how the project would comply with various requirements such as setbacks, impervious surface limits, parking lot design, landscaping, building area, and others. These types of plans are required for the following CZDs:

- Agricultural Support Enterprises (ASE-CD);
- Home Park (HP-CD);
- NC Highway 57 Speedway Area Rural Economic Development Area (REDA-CD-1);
- Residential (R-CD); and
- Non-residential (NR-CD).

Master Plan Development Conditional District (MPD-CD) applications are not required to submit a site specific development plan. They are required to submit a concept plan.

- 7. Why are MPD-CD applications not required to submit a site specific development plan?**
Per Section 3.8 Conditional Districts – Master Plan Development (MPD-CD) of the UDO, the purpose of the MPD-CD is to provide for:

‘..... unified large scale subdivisions, non-residential, and mixed- use developments that promote economical and efficient land use, improved level of amenities, appropriate and harmonious variety, creative design, and a better environment through the approval of a general concept Master Plan the permits defined flexibility to accommodate land use adjustments in response to evolving market trends.

To that end, projects are intended to allow for flexibility in dimensional/development standards with the overall goal of ensuring compatibility with planning objectives, anticipated development patterns, existing infrastructure planning, and surrounding properties.

The master planning process allows applicants to either demonstrate compliance with applicable standards (i.e. setbacks, impervious surface limits, parking lot design, landscaping, building area, etc.) or provide ‘design alternatives’ that meet the intent and spirit of existing regulations.

Approval, essentially, creates a new zoning district establishing mandatory development standards/criteria governing actual development activities. Through this process, the County has the opportunity to impose conditions on development activities to address potential impacts.

- 8. What else is required to be submitted as part of a CD application?**

CD requests are required to submit the following information:

- a. Completed application;
- b. A detailed description of the proposed use of property;
- c. A detailed traffic survey;
- d. Environmental Document(s);
- e. Landscape plan;
- f. A summary of utility services, including processing of wastewater;
- g. A schedule of construction of all elements of the proposal;
- h. Other information identified during the pre-application conference deemed essential

to demonstrate the project's compliance with applicable regulations.

9. Can the County impose conditions on a CD?

Yes. The County has the ability to impose conditions, however, these conditions must be mutually agreed upon by the County and applicant. Further, conditions are limited to those addressing conformance of the development to applicable regulations and/or the adopted Comprehensive Plan/other relevant plans addressing:

- a. The compatibility of the proposed development with surrounding property
- b. Proposed support facilities (i.e. roadways and access points, parking, pedestrian and vehicular circulation systems, screening and buffer areas, etc.); and/or
- c. Other matters the County may find appropriate or the petitioner may propose, but limited to items within the County's regulatory authority.

10. How is development within an MPD-CD district acted upon?

Development within an MPD-CD is permitted only through the review and approval of site plan application(s) in accordance within Section 2.5 of the UDO. This is so staff can verify all imposed conditions are adhered to.

11. Will this site plan be reviewed/commented on by the Planning Board or elected officials?

No. The site plan shall be reviewed and acted upon by staff administratively consistent with the provisions of the UDO.

12. What are the benefits of the MPD-CD process?

The chief, primary, benefit is staff are able to review/process development of a parcel and/or multiple parcels under a uniform set of development criteria where there are shared opportunities for infrastructure development (i.e. parking areas, preservation of existing landscaping, outdoor lighting, signage, access management, stormwater management, etc.).

Under general zoning standards, parcels are typically developed independently with little to no opportunity for the County to compel coordination of development activities. Each parcel would have to have its own parking area, stormwater feature, landscape buffers, allowable building area (i.e. floor area ratio), individual outdoor lighting fixtures, etc. From staff's standpoint this translates to more development activity, more impervious surface area, and increased opportunities for internal/external impacts.

13. Who may speak or offer comment during the review of a CD?

Everyone. Applicants and those individuals supporting, or opposed to, the application are encouraged to attend meetings where a CD is discussed and offer comment(s).

The best time to speak directly to the applicant is at the NIM. The NIM is also a good opportunity to ask questions of staff related to the process for the review of the application.

The Planning Board is a good opportunity to learn more about the comments and recommendations from the advisory board and staff.

The public can offer their opinions and comments in written form to the BOCC at any time, but the public hearing is the best time to speak publicly in person.

14. When would I learn about an application being submitted?

There are various notification requirements associated with the review of a CD application at

various points along the process.

There is a listing of current projects at the Planning page of the County website. The complete application package is made available to the public on the County website once it has been formally accepted for review by staff.

Before the NIM, there will be notice posted at the site and mailed to those within 1,000 ft. of the property advertising the meeting. This is the same for the Planning Board and BOCC meetings where the application will be reviewed. BOCC meetings are also advertised in local newspapers.

Planning Board and BOCC meeting agendas are posted on-line so the general public can review materials associated with the review of a CD. You can be put on a list to receive notices about all BOCC meetings through a request to the BOCC Clerk's office.

Planning Board and BOCC are public meetings, which are open to public attendance. Only the BOCC public hearing includes a right to participate and that is limited (such as with the 3 minute time limit).

15. What is the most effective way of engaging with the process?

Planning staff are available to answer questions on a development proposal and/or to explain process requirements.

Attend the NIM to learn about the applicant's proposal and have an opportunity to ask questions and offer comments.

Attend the Planning Board meeting to learn about staff and Board recommendation(s).

Write to the BOCC or speak at the public hearing. At the public hearing you will be limited to 3 minutes, but there is no limit to emailed comments. If you share the opinion of others, try to join together and co-sign a single message. Try to be specific with particular proposals, recommendations or conditions.

16. Who do I contact with questions?

- Questions about the application, procedural questions, or Planning Board meeting(s) should be directed to the Planning Department at (919) 245-2575;
- To receive email notices of BOCC agendas/meetings, go to the following webpage: <http://www.orangecountync.gov/1561/Electronic-Newsletters> and select the link following "Board of County Commissioners (Sunshine)". Type in your email address and select Sign In. Next, click on the envelope icon in front of Board of County Commissioners (Sunshine) to receive email notifications.
- Questions on Planning Board agendas can also be addressed by the staff of the Planning Department. Planning Board agenda packets, as well as meeting minutes, are posted on the County website and can be accessed here:
<https://www.orangecountync.gov/1194/Orange-County-Planning-Board-PB>

17. What are the roles of staff, the Planning Board, and the elected officials in the review of

a CD?

Staff:

- Determine if the application is complete with applicable submittal requirements (Section(s) 2.8 and 2.9.2 of the UDO);
- Determine consistency with the adopted Comprehensive Plan;
- Review and make a determination if the proposal is consistent with applicable development standards **or** if proposed 'design alternatives' are consistent with the spirit/intent of the UDO;
- Recommend imposition of conditions to address potential impacts;
- Recommend approval/denial of the project based on the provisions of the UDO and the project's compliance with the Comprehensive Plan.

Planning Board:

- Review the development proposal and ask questions of the applicant and staff;
- Review/discuss staff's analysis;
- Although not required, the PB often will Receive public comment on the proposal;
- Make a recommendation on the approval or denial of the request to the BOCC.

- **BOCC:**

- Schedule and hold a public hearing to receive the application;
- Hear from the applicant and staff;
- Receive public comment on the proposal;
- Review/discuss the staff and Planning Board's analysis and recommendation(s);
- Discuss imposition of conditions;
- Approve or deny the request.

18. How are decisions to approve or deny a CD made?

The BOCC approves or denies a CD request based on:

- a. The proposals consistency with the adopted Comprehensive Plan;
- b. Consistency/compliance with other applicable plans (i.e. small areas plans, water/sewer infrastructure plans, transportation improvement plans, etc.);
- c. Suitability of proposed development with surrounding properties as well as the recognized/anticipated development patterns in the area where the project is located;
- d. Compliance with applicable development standards as embodied within the UDO and/or the appropriateness of proposed 'design alternatives';
- e. Public comments; and
- f. Staff and Planning Board recommendation(s).

19. Can I discuss the project with staff, members of the Planning Board, and the BOCC?

Yes, you can have discussions with various parties outside of scheduled meetings/hearings concerning a CD application. This would not be the case with an SUP or other quasi-judicial hearings, where the board members are precluded from deliberations outside the hearing.

20. Is there a record of the proceedings?

Yes. Minutes from Planning Board and BOCC meetings where a CD application is reviewed/discussed/acted upon are maintained by the County. The Planning Department maintains the application components and become a part of the file on that case.

21. What is the effect of a CD approval?

Per Section 2.9.2 (G) of the UDO, approval of a CD is binding on the property. Development and use of the subject parcel(s) is governed by the submitted/revised application package, the actual ordinance adopted by the BOCC approving the rezoning request, all conditions imposed as part of the CD review process, and the applicable provisions of the UDO.

22. Are decisions on CD applications subject to further review?

Yes. Decisions are subject to review by the Superior Court. Per Section 2.26.5 of the UDO, an appeal to Superior Court must be filled within 60 days from the date of adoption of the ordinance approving the zoning atlas amendment.