

The Morehead City Planning Board conducted a remote public meeting on Tuesday, December 15, 2020, via the Zoom video conferencing application, at 5:30 p.m. The following people were present:

MEMBERS: Tom Outlaw (Chairperson), Ronetta Gaskill (Vice Chairperson), Sally Lumpkin, Tom Saunders, Andrea Smith, Diana Tootle, and Matt Johnson.

ABSENT: None

Others present: Planning and Inspections Director Sandi Watkins, Secretary Annie Bunnell, Zoning Enforcement Officer Jeannie Drake, Planner Karyn Reid, Elise Clouser with the Carteret County News-Times, Councilman George Ballou, John Ballou, Marc Best, Jonathan McDaniel, Vincent Martin, Mary Martin, Ron Cullipher, Edward Slavin, Martha Pittman, Susan McIntyre, Andy Daunhauer, Steven Levin, Tonya Jacks, Mary Ann Hinshaw, Scott Lewis, Ryan Eggleston, Greg Smith, Linwood Stroud, and Susan Shouse.

Chairman Tom Outlaw called the meeting to order and gave the invocation. Chairman Outlaw explained that the rezoning request for 301 Highway 24 had been withdrawn and would not be discussed.

The roll was called and no one was absent.

Diana Tootle led the Pledge of Allegiance.

**MINUTES: November 17, 2020:** Tom Saunders made **MOTION**, seconded by Diana Tootle, to adopt the minutes and dispense with the reading. The motion carried unanimously.

**NEW BUSINESS:**

**A.) Rezoning Request from The Cullipher Group, P.A., on behalf of Ballou & Sons, Inc. to amend the Highway Commercial Conditional Zoning district and associated special use permit for 2406 Mayberry Loop Road (PIN# 637612975021000) to allow boat storage, recreational vehicle storage, parking facility and self-service storage facility uses (up to four additional buildings).**

Total Acreage: 1.85. Effective Flood Zone: Zone X. Preliminary Flood Zone: Shaded X.

The Cullipher Group, on behalf of Ballou & Sons, Inc. has submitted a request to amend the Highway Commercial Conditional Zoning District (CH-CZ) for 1.85 acres located at 2406 Mayberry Loop Road to allow boat storage, recreational vehicle storage, parking facility and self-service storage buildings (up to four additional buildings). The property is currently vacant.

Surrounding zoning classifications include R15 (Single-Family Residential) to the north, west, and across Mayberry Loop Road to the south and CH-CZ to the east. The surrounding land use includes a self-service storage facility to the east, single-family residential and manufactured homes to the north and across Mayberry Loop Road to the south and a vacant tract to the west.

On September 10, 2002, Council adopted Ordinance 2002-32 granting the request to rezone from R15 (Single-Family Residential) to CH-CU to allow for self-service storage facility buildings to be constructed on the property located at 2404 and 2406 Mayberry Loop Road subject to the following conditions:

- 1) There shall be no outdoor storage;
- 2) The inclusion of a buffer and fence around the perimeter of the property;
- 3) That the hours of operation be from sunup to sundown; and
- 4) All development is subject to all state regulations.

On November 14, 2006, the Council adopted Ordinance 2006-78 granting a request for revision to the conditional use permit to allow outdoor storage on the site. The following conditions were attached to the approval:

- 1) The hours of operation be limited from 8 a.m. to 6 p.m. or sunset, whichever is later;
- 2) The application must meet all state regulations;
- 3) The storage area must be screened from public view, by creation of a perimeter between the residences to the north side of the property and additional plantings of a size and type which would grow quickly so the neighbors will not be negatively impacted; and
- 4) The outdoor storage would be limited to vehicles on wheels, such as cars, boats and r.v.'s. Although not included in the enacting ordinance, the motion made by Council in 2006 limited the outdoor storage only to "the designated area". The associated site plan provided at the time showed the area designated for outdoor storage at the rear portion of 2404 Mayberry Loop Road behind the self-service storage buildings.

The applicant is currently requesting to amend the conditional-use district for 2406 Mayberry Loop Road to allow the following uses:

- Boat storage – Without conditional zoning option, requires special use permit in CH
- Recreational vehicle storage – Permitted unoccupied on any lot
- Parking Facility – Allowed as a permitted use in CH
- Self-Service Storage facility (maximum four buildings) – Allowed as a permitted use in CH

The property is located within the extraterritorial jurisdiction (ETJ). The property is in Neighborhood 7 of the 2007 Core Land Use Plan and classified as Low Density Residential.

Property owners within 300 feet of the property were notified of the Planning Board meeting. The public hearing will be held January 12, 2021 and advertised twice. The property has been posted.

Pre-Existing Conditional-Use District Amendment:

Effective January 1, 2021, conditional-use districts are automatically converted to conditional zoning districts and conditional-use permits are automatically converted to special use permits. For pre-existing conditional use district cases, terminology is changing (i.e. conditional zoning district instead of conditional-use district; with a special use permit instead of a conditional-use permit), but the existing Article 10 Conditional Use District process will continue to be followed for amendments to existing conditional use districts until such time as a new conditional zoning ordinance has been adopted by the City Council. The new, yet-to-be-adopted conditional zoning process must be followed for any requests to establish new conditional zoning districts.

Planning Director Sandi Watkins introduced the request by reviewing the staff report. The applicant desires that the amendment include alternate landscape plan approval to be able to retain the existing chain-link fence and existing plantings and vegetation.

In response to questions from Chairman Outlaw, Ms. Watkins explained that the request as submitted only pertains to the property at 2406 Mayberry Loop Road. Based upon evaluation of past approvals, self-service storage facilities would be allowed on the site, but not outdoor storage. A chain link fence currently exists around the perimeter of the subject property and the adjacent property at 2404 Mayberry Loop Road.

Andrea Smith said she was curious as to why the Council did not want outdoor storage at the location when the rezoning was originally approved. Ms. Watkins said that according to the staff report document provided to the Council in November 2006, the Planning Board had reviewed the item and had recommended no outdoor storage. The Council approved the request with this condition. The applicant came forward in 2006 to request that outdoor storage be permitted in the designated area behind the

existing buildings and the request was granted at that time. Ms. Smith said that it is unclear, but the legislative intent of the limitation could have been scope since the area was residential rather than commercial or industrial.

Chairman Outlaw asked if anyone wished to speak on behalf of the request.

Ron Cullipher said the Cullipher Group is representing Ballou & Sons on this application. The 2006 amendment restricted outdoor storage to the area behind the existing buildings and the applicant wishes to expand the use to the adjacent parcel. The applicant does not desire to impose a time limitation on this property because they do not want to be in violation if someone arrives at 7:30 a.m. to pick up a boat. A chain link fence exists fifteen feet inside the property line on the north, east, and west sides, with plantings on the outside of the fence. There is a neighbor to the north who is concerned about the effectiveness of the existing buffer and the view from her residence. Mr. Cullipher said he thinks that the applicant should meet on site with staff to see if additional plantings should be added to supplement the existing plants.

Chairman Outlaw read the 2006 condition related to the buffering requirement imposed at the time of the zoning amendment approval and asked if this was done. Mr. Cullipher said from the best of his knowledge this was done at the time. Ms. Smith asked if the screening is still there. Mr. Cullipher said that the trees are within five feet (5') to six feet (6') of the fence and the natural vegetation behind that is within fifteen feet (15'). It is difficult to determine if the screen is opaque or not. It is not apparent how much of the natural vegetation is on the Ballou property that is part of the existing buffer. The applicant is willing to meet onsite with staff to help ensure compliance with the condition.

Diana Tootle asked what types of cars would be parking there and would they be working cars. Mr. Cullipher said the area would be used primarily for RV and boat parking.

Tom Saunders asked if any lighting would encroach into the residential area behind the subject property. Mr. Cullipher responded that there would be security lighting in the storage area, but it would not shed light onto neighboring properties.

Chairman Outlaw asked for clarification that the applicant did not want to impose hours of operation on this parcel. Mr. Cullipher confirmed that this is correct. Mr. Outlaw said that would mean that 2404 Mayberry Loop Road would be restricted, while 2406 Mayberry Loop Road would not be restricted. Mr. Cullipher said he understands the logistical problem. Mr. Outlaw said he would prefer the condition be applied to the both properties within the fenced area.

With no further questions of Mr. Cullipher, Mr. Outlaw opened the meeting to others interested in speaking on the subject.

Vincent Martin, 1211 Mizelle Drive, said that following the 2006 approval, trees were planted. A few have since died, while some have grown taller. The screening between the properties is limited. The natural vegetation is on his property. There is an existing light (on the property at 2404 Mayberry Loop Road) that shines into his bedroom at night.

Mary Martin, 1211 Mizelle Drive, said she is concerned about increased noise, light, and traffic. She said this is unacceptable unless the developer can come up with a way to screen the property so that she and her husband can no longer see it.

Mr. Martin asked if someone would come to view the property. Mr. Outlaw said it would likely be the applicant and staff. Ms. Martin requested that she and her husband be involved in the conversation.

John Ballou, 1805 North 20<sup>th</sup> Street, said that the owners have owned the property since 1975. They want to be good neighbors and will do whatever they need to help their neighbors, the Martins. The original buffer which was approved by the Town included twenty-eight (28) trees along the rear property line. A few have died as a result of not being able to get adequate sunshine as well as hurricane damage. The trees were originally planted fifteen feet (15') apart and approximately five feet (5') off the fence. The fence is fifteen feet (15') from the property line. The owners do not intend to add any additional lighting. Mr. Ballou said he agrees to plant trees back, but the trees on the Martin property line will need to be trimmed back away from his property so the new trees will have enough sunlight to grow. A new electric gate was recently installed on the property to reduce the number of vehicles turning around on the property.

Chairman Outlaw asked if Mr. Ballou would limit the hours of operation on this piece of property. Mr. Ballou said at this time the applicant is not asking for that limitation.

Chairman Outlaw asked if there was anyone else from the public who wished to speak regarding the item. Hearing and seeing none, he asked for discussion amongst the board.

Sally Lumpkin asked what type of vegetation would be required if this were a brand new project. Ms. Watkins said evergreens would be required. In this case, the applicant is requesting to modify the landscaping requirements, so the design professional has an opportunity to demonstrate to the board that the alternate proposal provides adequate buffering from the adjacent property. Ms. Smith asked would a new project be allowed to have a chain-link fence or would it have to be wooden. Ms. Watkins responded that a fence without a major modification of landscaping requirements would be required to be solid. Ms. Smith said this could potentially help to fix the screening issue. Chairman Outlaw said there should be shrubs that can grow in the shade. He asked how tall the fence is, to which Mr. Cullipher responded, the fence is at least six feet (6') and possibly eight feet (8') in height. Chairman Outlaw said the request before the board is for the 2406 Mayberry Loop Road parcel. The 2404 Mayberry Loop Road parcel is not part of the applicant's request. The existing chain link fence runs all the way around both the subject property and the adjacent developed property. Mr. Saunders said that if the applicant, adjacent property owner, and Town could work together to resolve the buffering issue, he sees it as a positive to move forward on the request. Mr. Outlaw agreed. Mr. Outlaw asked Mr. Cullipher if he was willing to work with the neighbor and the Town to establish shrubs to help with the problem of the neighbor being able to see through the fence. Mr. Cullipher said the applicant would be willing to work with Town staff to help remedy the concerns.

Chairman Outlaw said he felt the restrictions imposed in 2006 should be kept the same on this property as the adjacent parcel at 2404 Mayberry Loop Road. Ms. Smith said she agreed since both properties are surrounded by the same fence. It would be different if there was a fence between the two properties. She felt there can't be one set of rules for one side and a different set of rules for the other. Ms. Smith asked how the property owner would regulate hours of operation. Mr. Ballou replied that users of the

facility have an access code for entry. Having a fixed set of hours for gate access is not requested because he would not be able to accommodate his customers when they need to access their property. Mr. Saunders asked neighbors Vincent and Mary Martin if they would have an issue with not incorporating an hours of operation restriction on the request. Mrs. Martin replied that restricting entry past sunset seems a bit too strict. She said that even though it does get noisy at times when people start up their boats or trucks, she hopes the outcome of the discussion about buffering and trees will help mitigate such issues.

Ms. Lumpkin asked if staff had heard from anyone aside from the Martins. Ms. Watkins said staff had received no other correspondence regarding this request. Mr. Ballou said he had spoken with numerous other neighbors and they said they agreed with what he wishes to do on the site.

Sally Lumpkin made **MOTION**, seconded by Tom Saunders, to recommend approval of the request as submitted by the applicant and Resolution 2020-0013. The motion carried 5 to 2 with Tom Outlaw and Andrea Smith in opposition.

***B.) Request submitted by Embassy Snug Harbor Realty, LLC, on behalf of Best Ventures, LLC, to rezone 3822 Galantis Drive (PIN# 637613242798000) from RMF-CZ (Residential Multifamily-Conditional Zoning) District to OP (Office & Professional) District.***

*Total Area: 10.8 Acres. Effective & Preliminary Flood Zones: Zone X.*

Embassy Snug Harbor Realty, LLC, on behalf of Best Ventures, LLC, has submitted a request to rezone 10.8 acres located at 3822 Galantis Drive from RMF-CZ (Residential Multifamily – Conditional Zoning District) to O&P (Office & Professional). The property is currently vacant and wooded.

On November 10, 2009, the Morehead City Town Council adopted Ordinance 2009-05 granting a conditional-use rezoning request from R20 (Single-Family Residential) to RMF-CU (Residential Multifamily – Conditional Use) to allow a senior apartment complex with ninety-six (96) units subject to the following conditions:

- 1) Receipt of state stormwater permit;
- 2) Receipt of sedimentation and erosion control permit;
- 3) Receipt of a lighting plan in accordance with Article 13-2.2(K) of the Unified Development Ordinance (UDO);
- 4) Construction by the developer of the cul-de-sac at the terminus of Mandy Lane;
- 5) Improvement of the driveway area [future Galantis Drive Extension] and sidewalk, by the developer, to Council-approved standards;
- 6) Provision for a pedestrian walkway within the development to connect the amenities;
- 7) Provision for the recreational amenities including, but no limited to, a gazebo, picnic table, and swing;
- 8) That the project remain in perpetuity an age-restricted multi-family development for adults 55 years of age and older; and
- 9) That the project remain an affordable development within the guidelines set forth by the North Carolina Housing Finance Agency.

As a conventional legislative rezoning request, no conditions may be imposed upon the current request.

The surrounding zoning districts include R20 to the north, O&P to the east, RMF-CZ to the south across Galantis Drive, and MA-CZ (Medical Arts Conditional Zoning District) to the west. Surrounding land use includes single-family residential to the north, vacant lots to the south across Galantis Drive and to the west, and the Leon Mann Senior Center to the east. The property is located within the corporate limits.

This property is in Neighborhood 5 of the 2007 Core Land Use Plan and is classified as Low Density Residential on the Future Land Use map.

Property owners within 300 feet of the property were notified of the Planning Board meeting as well as the date of the public hearing which is scheduled for January 12, 2021. The property has been posted.

**Conventional Rezoning Request:** Conventional rezoning requests require consideration of all the uses permitted in the districts because potentially any of the uses may be located on the site if the property is conventionally-zoned. Looking at all the approved conditional zoning district and all the permitted and special uses in OP, which is the more appropriate zoning classification for the property? No site plan is required, and decisions cannot be based upon a specific use of the property, even though the property owner may speak to a specific use.

**Land Use Consistency Statement/Resolution:** In accordance with N.C.G.S. 160A-383, a land use consistency statement must be adopted when a zoning amendment is approved or rejected. The draft statement provided may be modified or rewritten at the discretion of the Planning Board and must take one of the following three forms:

A statement recommending approval of the proposed zoning amendment and describing its consistency with the plan; 2. A statement recommending denial of the proposed zoning amendment and describing its inconsistency with the plan; or 3. A statement recommending approval of the proposed amendment and amendment of the land use plan, along with an explanation of the change in conditions to meet the development needs of the community that were considered in recommendation of the zoning amendment.

Ms. Watkins introduced the request by reviewing the staff report. The applicant wishes to rezone the eastern portion of the parcel only. The western portion must be rezoned prior to development due to the current conditional zoning designation of the parcel.

Applicants Linwood Stroud and Andy Daunhauer of Stroud Engineering, P.A. were present to answer Board questions.

Diana Tootle made **MOTION**, seconded by Andrea Smith, to recommend approval of the rezoning request and Resolution 2020-0014. The motion carried unanimously.

***C). Request from Bell and Phillips, PLLC, on behalf of Jim & Em Properties, LLC, for Sketch Development Plan Approval for North Morehead Extension to be located at the termini of Harrell Drive and Hamilton Drive.***

*Zoned R7. Effective (Current) Flood Zone: AE 6. Preliminary (Draft) Flood Zone: AE 9. Total Area: 5.69 acres. Minimum lot size: 7,000 square feet. Average Lot Size: 11,448 square feet.*

Bell and Phillips, PLLC, on behalf of Jim & Em Properties, LLC, is requesting sketch plan review for a proposed seventeen-lot residential subdivision located on Harrell and Hamilton Drive. The property is currently shown as four different tax parcels on the Carteret County GIS. The total area of the tract is 5.69 acres and the area is zoned Single-Family Residential (R7). The tracts are currently undeveloped and located within corporate limits. The subdivision is proposed to be serviced by City water and sewer.

Approximately 0.97 of the project area is shown within proposed rights-of-way which will be a minimum width of sixty (60) feet wide. The Fire Marshal has requested that the street names Harrell Drive and Hamilton Drive be retained based upon the Town's current numerical addressing system.

Streetlights will be required at a rate of one per every 400 linear feet and utilities must be located underground.

No open space is required since the subdivision does not generate a minimum of an acre of open space under the open space formula contained in Article 15 of the Unified Development Ordinance. Based upon the formula in section 15-7 and the current tax value, it appears that the open space fee would be \$23,500 (minimum \$50,000 per acre \* 0.47 acre). The open space would be calculated and due prior to final plat recordation. (Note: Payment of a recreation fee or provision of open space area is also at the discretion of the City Council.)

**Sketch (Conceptual) Plan:**

City Departments, Planning Board and Council review the Sketch Plan. This is an opportunity to comment on and suggest changes to the project design. The sketch plan shows the entire development. The sketch plan was submitted to the other city departments for review and adjustments have been incorporated with the exception that staff has requested that Hamilton Drive remain Hamilton Drive to ensure consistency with the Town's numerical addressing system. The sketch plan, including any Planning Board comments, will be forwarded to the Town Council for consideration during its meeting on January 12, 2021.

Ms. Watkins introduced the request by reviewing the staff report. Board members were referred to two pieces of citizen correspondence pertaining to stormwater concerns. The recorded 1966 plat as well as the current request for subdivision were both shown during the presentation. Ms. Watkins explained the property to the north has been developed since the 1966 subdivision plat, so the applicant does not propose to connect Hamilton Drive to North Yaupon Terrace.

Ms. Smith asked if the developer would be able to bring in fill to the area. Ms. Watkins responded that the developer may bring in fill subject to the Town's regulations regarding fill and it is possible that this could be incorporated as part of their stormwater permit. Staff has not reviewed the information yet as it is not required to be provided by the developer until submission of the preliminary plat.

Jonathan McDaniel of Bell and Phillips, PLLC spoke and stated that his company made the original plat in the 1960's and that he was able to find information on what was originally intended. There are existing ditches from the 1970's on the property. The new drainage plan should improve the drainage in the area. Mr. McDaniel said he had spoken with Keith Stroud who had submitted concerns about the request, but had not yet spoken with the other neighbor who had submitted written concerns.

Ms. Smith stated that she felt the subdivision request made sense as it is located in a part of Morehead City that was developed a long time ago.

Matt Johnson made **MOTION**, seconded by Andrea Smith, to recommend approval of the Sketch Development Plan for North Morehead Extension. The motion carried unanimously.

***D). City-initiated request to amend the following sections of the Unified Development Ordinance (UDO): amend Article 2-2 Definitions to add a definition for Conditional Zoning; repeal Article 10 Conditional Use District in its entirety and replace it with Article 10 Conditional District; and related amendments contained under sections 3-12 The City Council, 12-2.4 Development Standards, 13-1 Schedule of Development Requirements, 15-6 Landscape Plan Requirements, 24-3 Application Procedure, and Appendix A-4 Graphic Materials Required for Plans.***

Staff has completed a review and draft of revisions to Article 10 of the Unified Development Ordinance. Article 10 is currently entitled "Conditional Use District". The proposed title of the article is "Conditional Zoning District". Under this proposal, the conditional-use district and all references to it would be deleted and would be replaced by the conditional zoning district.

In July 2019, the North Carolina General Assembly enacted Session Law 2019-111 (amended in part by Session Law 2020-25 in June 2020) consolidating current city- and county-enabling statutes for development regulations (now in Chapters 153A and 160A) into a single, unified chapter, Chapter 160D. Most of the adjustments contained in the legislation include clarifying amendments and consensus reforms that will need to be incorporated into the Unified Development Ordinance. The first of the needed changes already adopted by the Town Council included amendments to Articles 5 and 6 of the Unified Development Ordinance related to quasi-judicial decisions.

A substantive change that will become effective on January 1, 2021, is the elimination of the conditional use district zoning process. According to Chapter 160D: A New Land Use Law for North Carolina (pages 13-14), written by School of Government professors David Owens and Adam Lovelady:

"The concept of special use district zoning or conditional use district zoning was incorporated into the zoning statutes in the 1980s as a work-around to avoid contract zoning when individualized site-specific conditions were deemed to be needed. The conditional use district concept required a concurrent legislative rezoning and quasi-judicial conditional use permit. That concurrent consideration of a legislative decision and a quasi-judicial decision was legally complicated and the source of considerable confusion for local governments, landowners, and neighbors. Subsequent case law and statutory authority allowed purely legislative conditional zoning in place of the complicated legislative/quasi-judicial conditional use district zoning. The definitions of Chapter 160D confirm that conditional zoning

is “[a] legislative zoning-map amendment with site-specific conditions incorporated into the zoning-map amendment.” As it is no longer needed, the conditional use district zoning process is eliminated by Chapter 160D.”

In accordance with NC Session Law 2019-111, Section 2.9.(b) “Any special use district or conditional use district zoning district that is valid and in effect as of January 1, 2021, shall be deemed a conditional zoning district consistent with the terms of this act, and the special or conditional use permits issued concurrently with establishment of those districts shall be valid as specified in Section 2.9.(a) of this act. Any valid “conditional use permit” issued prior to January 1, 2021, shall be deemed a “special use permit” consistent with the provisions of this act.” Therefore, any existing conditional use district approvals are automatically converted to conditional zoning districts and existing conditional use permits or special exceptions will automatically be converted to special use permits on January 1, 2021.

The purpose of the proposed amendments below is to delete language associated with quasi-judicial conditional-use district zoning and establish a new ordinance for requests to establish new legislative conditional zoning districts. Following are the proposed revisions:

Amend section 2-2 to add definitions for Conditional Zoning and Special Use Permit and to delete the existing definition for Special Use:

Add 2-2.66.1 Conditional Zoning. A legislative zoning map amendment with site-specific conditions incorporated into the zoning map amendment.

Amend 2-2.286 Special use permit. A permit issued to authorize development or land uses in a particular zoning district upon presentation of competent, material, and substantial evidence establishing compliance with one or more general standards requiring that judgement and discretion be exercised as well as compliance with specific standards. This definition includes permits previously referred to as “conditional use permits” or “special exceptions”. ~~Special use. A use that would not be appropriate generally as a right without restrictions throughout a zoning district, but which, if controlled as to number, area, location, or relation to the neighborhood, would promote the public health, safety, morals, or the general welfare. Special use permits are reviewed by the Board of Adjustment.~~

Repeal Article 10. Conditional Use District and replace it with Article 10. Conditional Zoning District as follows:

### Conditional Zoning District

#### 10-1 Purpose

10-1.1 Conditional zoning is established to provide flexibility in the development of property while ensuring that a development is compatible with neighboring uses. Conditional zoning affords a degree of certainty in land use decisions not typically possible in conventional zoning.

#### 10-2 Conditional Zoning District Designation

10-2.1 Each conditional zoning district shall be designated on zoning maps and other official documents by combining the designation of its parallel zoning district with the suffix, “-CZ”. For example, the conditional zoning district with a parallel zoning district of Commercial Neighborhood would be identified as “CN-CZ” on the zoning map.

#### 10-3 Relationship to Parallel Base Zoning District

10-3.1 Parallel Base Zoning District(s). Development in a conditional zoning district shall be subject to all the use and development standard requirements that apply to development in the parallel base zoning district, plus the conditions imposed as part of the conditional rezoning approval, which may not be less restrictive than the regulations for the parallel base zoning district.

10-3.2 Uses permitted. In order for a use to be allowed in a conditional zoning district, the use must be listed as either Permitted or Special Use in the associated district under Article 11 of this development regulation.

#### 10-4 Application of Conditional Zoning to Entire Lot Required

10-4.1 No application for a conditional zoning district may split an existing lot into a conditional zoning district and a conventional zoning district.

10-4.2 Nothing in this subsection shall limit a conditional rezoning that splits a lot or site into two or more different conditional zoning district designations.



**10-5 Submittal Requirements**

10-5.1 Following are general submittal requirements for requesting to rezone to a conditional zoning district:

- (A) Property may be placed in a conditional zoning district only in response to a petition by all owners of the property to be included in the conditional district.
- (B) Before a public meeting is scheduled before the Planning Board to review a request for a conditional zoning district, the applicant must submit a report of a community meeting conducted in accordance with section 10-6.
- (C) The applicant must clearly include in the application any uses proposed to be permitted on the subject property. No uses will be permitted except those enumerated in the enacting ordinance establishing the conditional district.

10-5.2 In addition to meeting the requirements of subsection 10-5.1, staff, the Planning Board, or Council may request that an application for a request to rezone property to conditional district include a site plan, drawn to scale, with any necessary supporting documentation. In addition, the following may be requested by staff, the Planning Board, or Council in order to evaluate the proposed conditional zoning district:

- (A) A boundary survey and vicinity map showing the property's total acreage, the present zoning classification(s), the general location and orientation of the property in relation to adjacent properties, streets, railroads, and/or waterways, the date, and a north arrow;
- (B) The owners' names, addresses, and tax parcel numbers of all abutting properties as shown on the tax records;
- (C) Existing easements, reservations, and rights-of-way and setbacks as required based upon the corresponding parallel zoning district;
- (D) Approximate location on the site of existing and proposed buildings, structures and other improvements;
- (E) Approximate dimensions, including the height of proposed buildings, structures and other improvements;
- (F) Proposed use of all land and structures, including the proposed number and square footage of all units, residential and nonresidential;
- (G) Proposed type and location of signs;
- (H) All existing and proposed points of access to public streets;
- (I) Delineation of areas within the regulatory floodplain as shown on the official flood hazard boundary map;
- (J) Proposed phasing, if any;
- (K) Approximate location of all existing and proposed infrastructure on the site, including water, sewer, roads, pedestrian walkways or multimodal paths and open space;
- (L) Existing and general proposed topography, if available, at five-foot contour intervals or less;
- (M) Stormwater management and drainage plan;
- (N) A traffic impact study of the proposed development prepared by a qualified transportation or traffic engineer or planner. If requested, the traffic impact study should include information such as: 1) existing traffic conditions within the study area boundary; 2) traffic volumes generated by the existing and proposed development, including morning peak, afternoon or evening peak, and average annual traffic levels; 3) the distribution of existing and proposed trips through the street network; 4) analysis of capabilities of intersections located within the study area boundary; 5) recommendations for improvements designed to mitigate traffic impacts of the proposed development and to enhance pedestrian access to the development from the public right-of-way; and/or other pertinent information, including but not limited to, accidents, noise, and impacts on air quality and natural resources;
- (O) A landscaping plan prepared in accordance with the requirements contained in Article 15 or to show plantings and/or screening proposed over and above those required by Article 15;
- (P) Description and/or copies of proposed deed restrictions to be placed on the property; and/or
- (Q) Any other information needed to demonstrate compliance with these regulations or compatibility with the area surrounding the property proposed to be rezoned.

10-3.3 A site plan and/or any supporting text shall constitute part of the request for all purposes under this Article.

10-3.4 The Planning Director may require the applicant to submit as many copies of the application and site plan in paper and/or electronic format as needed to circulate to the Planning Board and Town Council and to government departments and agencies for review and comment.

**10-6 Required community meeting prior to public meeting held before Planning Board**

10-6.1 Before a public meeting is scheduled before the Planning Board to review a request for conditional zoning, the applicant must file in the office of Planning and Inspections a written report of the community meeting held by the applicant.

10-6.2 Notice of such a meeting shall be given to property owners and tenants adjacent to the proposed project and within 300 feet of the proposed project parcel boundaries. Notice of the meeting shall be the responsibility of the applicant and shall be given at least two weeks in advance. The report shall include, among other things, a listing of those persons and

organizations contacted about the meeting and the manner and date of contact, the date, time and location/manner (e.g. in-person, web-conferencing platform, etc.) of the meeting, a roster of the persons in attendance at the meeting, a summary of issues discussed at the meeting, and a description of any changes to the rezoning petition made by the applicant as a result of the meeting. In the event the applicant has not held a meeting pursuant to this section, the applicant shall file a report documenting efforts that were made to arrange such a meeting and stating the reasons such a meeting was not held. The adequacy of a meeting held or report filed pursuant to this section may be considered by the City Council in the rezoning request, but shall not be subject to judicial review.

#### **10-7 Fair and reasonable conditions**

10-7.1 Specific conditions may be proposed by the petitioner or the Town of Morehead City or its agencies, but only those conditions approved by the Town Council and consented to by the petitioner in writing may be incorporated into the zoning regulations.

10-7.2 Conditions and site-specific standards imposed in a conditional zoning district shall be limited to those that address conformance of the development and use of the site to local ordinances, plans adopted pursuant to N.C.G.S. § 160D-501, or the impacts reasonably expected to be generated by the development or use of the site.

10-7.3 Such conditions to approval of the request may include, but are not limited to, dedication to the Town, county or state, as appropriate, of any land, rights-of-way or easements for streets, water, sewer, drainage, recreational uses or other public utilities necessary to serve the proposed development. Conditions may relate to the relationship of the proposed use to surrounding property, size, scale, location and design of structures, proposed support facilities such as parking areas and driveways, pedestrian and vehicular circulation systems, screening and buffer areas, preservation of protected trees, the timing of development, street and right-of-way improvements, water and sewer improvements, stormwater drainage, the provision of open space, and other matters that the City Council may find appropriate or the applicant may propose.

10-7.4 If for any reason any condition for approval is found to be illegal or invalid or if the applicant should fail to accept any condition following approval, the approval of the site plan for the district shall be null and void and of no effect. Proceedings shall be instituted to rezone the property to its previous zoning classification.

#### **10-8 Effect of approval**

10.8.1 If a request for conditional zoning is approved, the development and use of the property shall be governed by the predetermined ordinance requirements applicable to the district's classification, the approved site plan for the district, and any additional approved conditions, if applicable, all of which shall constitute the zoning regulations for the approved district and are binding on the property as an amendment to these regulations and to the zoning maps.

10-8.2 If a request is approved, only those uses and structures indicated in the enacting ordinance or indicated on a site plan referenced by the enacting ordinance shall be allowed on the subject property.

10-8.3 Following the approval of the request for a conditional zoning district, the subject property shall be identified on the zoning maps by the appropriate district designation. A parallel conditional zoning shall be identified by the same designation as the underlying general district followed by the letters "CZ" (for example, Commercial Neighborhood Conditional Zoning District would be designated as "CN-CZ").

10-8.4 No permit shall be issued for any development activity within a conditional zoning district except in accordance with the approved request and site plan for the district.

10-8.5 Any violation of the approved conditional zoning district or associated conditions for the district shall be treated the same as any other violation of this development regulation and shall be subject to the same remedies and penalties as any such violation.

#### **10-9 Modifications to approved plan**

10.9.1 Major changes to approved plans and conditions of development may be authorized only by the City Council after review and recommendation by the Planning Board in the same manner as applicable to zoning map amendments. Major changes include, but are not limited to:

(A) Change in use(s);

(B) Increase in intensity of the development; such as, increase in density of units, whether residential, office, commercial or industrial;

(C) An increase of 10% or greater of overall ground coverage by structures;

- (D) A reduction in approved open space or screening;
- (E) A change in vehicular access; or
- (F) A variation from an imposed condition.

10-9.2 Minor changes, which are not deemed as major changes by the Planning Director or as set forth under subsection

10-9.1, may, at his or her discretion, be authorized by the Planning Director in accordance with the following:

- (A) The Planning Director shall have the delegated authority to approve an administrative amendment to an approved site plan.
- (B) The standard for approving or denying such a requested change shall be that the change does not significantly alter the site plan and that the change does not have a significant impact upon abutting properties and does not qualify as a major change as set forth in subsection 10-9.1.
- (C) Any decision must be in writing stating the grounds for approval or denial.
- (D) If the Planning Director declines to exercise the authority to approve an administrative amendment to an approved site plan, then the applicant must file a rezoning request for a public hearing and Council decision.
- (E) Any request for a minor change/administrative amendment shall be pursuant to a written letter, signed by the property owner, detailing the requested change. Upon request, the applicant must provide any additional information that is requested. Upon an approval of an administrative amendment, the applicant must file a sufficient number of copies of a revised site plan as deemed necessary by the Planning Director.

#### **10-10 Review of approval of a conditional zoning district**

10-10.1 It is intended that property shall be reclassified to a conditional zoning district only in the event of firm plans to develop the property. Therefore, no sooner than three years after the date of approval of the request, the Planning Board may examine the progress made toward developing the property in accordance with the approved request and any conditions attached to the approval. If the Planning Board determines that progress has not been made in accordance with the approved request and conditions, the Planning Board shall forward to the City Council a report which may recommend that the property be rezoned to its previous zoning classification or to another district.

#### **10-11 Conditional-use zoning districts, conditional-use permits in effect as of January 1, 2021**

10-11.1 Any conditional-use district approvals that were valid and in effect as of January 1, 2021, are converted automatically to conditional zoning districts. Any conditional use permits issued concurrently with the establishment of those conditional-use districts are converted automatically to special-use permits.

Repeal and replace existing conditional use district section.

### **ARTICLE 10.—CONDITIONAL USE DISTRICT**

#### **10-1—Purpose**

~~This Ordinance contains regulations which establish zoning districts and assigns land uses to one (1) or more of these districts. The Ordinance also provides standards for development which regulate lot sizes, yards, parking, and open space. There are, however, certain circumstances which often arise when 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. In order to accommodate this situation, this section establishes the conditional use district process. The conditional use district process is established to address those situations involving a rezoning when a particular use may be acceptable but the general classification which would allow that use would not be acceptable. It allows the City Council to approve a rezoning proposal for a specific use with reasonable conditions to assure the compatibility of the use with surrounding properties. Any use permitted under this process must also conform to the development regulations for the corresponding general zoning district. This is a voluntary procedure which is intended for firm development proposals. It is not intended or suited for securing early zoning for tentative proposals which may not be undertaken for some time.~~

#### **10-2—Application and Review Process**

~~The following process applies to the conditional use district:~~

~~10-2.1 Application. Rezoning petitions to establish a conditional use district must be submitted to the Planning Board and will be processed in accordance with section 24-3 as well as the provisions of this section. A conditional use district classification will be considered only if the application is made by the owner of the property or his/her authorized agent. All applications must include a schematic plan drawn to scale, any supporting text for the ordinance amendment and the following items:~~

- ~~(A) A boundary survey showing the total acreage, present zoning classification(s), date, and north arrow;~~
- ~~(B) The owners' names, addresses, and the tax parcel numbers of all abutting properties as shown on the tax records;~~
- ~~(C) All existing easements, reservations, and rights of way and all setback requirements for the zoning district requested;~~
- ~~(D) Proposed use of the land and structures. For residential uses, this should include the number of units and an outline of the area where the structures will be located. For nonresidential uses, this should include the approximate square footage of all structures and an outline of the area where the structures will be located;~~
- ~~(E) Traffic, parking, and circulation plans, showing the proposed locations and arrangement of parking spaces and access points to adjacent streets.~~

~~10-2.2 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 City Council may request additional information as it deems necessary. This information may include, but is not limited to:~~

- ~~(A) Proposed buffering, including walls, fences, or planting areas as well as treatment of any existing natural features;~~
- ~~(B) Delineation of areas within the regulatory flood zone as shown on the official FEMA flood zone maps;~~
- ~~(C) Existing and proposed topography at two-foot contour intervals or less;~~
- ~~(D) Generalized information on the number, height, size, and the location of structures;~~
- ~~(E) Proposed number and location of signs;~~
- ~~(F) Lighting plan;~~
- ~~(G) \_\_\_\_\_~~
- ~~(H) Proposed phasing, if any, and approximate completion time of the project;~~
- ~~(I) A statement analyzing the reasonableness of the proposed rezoning shall be prepared for each petition for a rezoning to a special or conditional use district or other small scale rezoning.~~

~~The application for a conditional use district must contain information and/or site plans which indicate all of the principal and accessory uses which are proposed to be developed on the site. Subsequent to the approval of a conditional use district, only those principal and accessory uses indicated on the approved plan may be constructed on the site. Any substantial modifications to an approved plan, including any changes in the permitted principal or accessory uses, must comply with the provisions of section 10-2.~~

~~10-2.2.1 Additional guidelines for downtown business district, except for buildings located over public trust waters. As for a request for variation in the height limitations within the DB district, the following additional information must be presented to Council:~~

- ~~(A) Specific reasons as to why the allowed height is inadequate to the project proposed (e.g. roof design, flood elevation and permitting requirements);~~
- ~~(B) Advantages to be recognized by the city and the public for allowing additional height in the project (e.g. job creation, downtown revitalization benefits, parking and infrastructure capacity, tax base, etc.);~~
- ~~(C) The setback and placement of the building in relation to the setback of adjacent, opposite and surrounding buildings;~~
- ~~(D) Sketches, drawings and renderings showing general forms and proportions of buildings and structures;~~
- ~~(E) This variation in height limits shall not be used on buildings located over public trust waters.~~

~~10-2.3 Review and approval. When considering an application for the establishment of a conditional use district, the City Council shall conduct the public hearing in a quasi-judicial manner and must follow evidentiary hearing procedures. The City Council 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 surrounding property, proposed support facilities such as parking, buffering, the timing of development and other matters that the Council may find appropriate or that the petitioner may propose. The conditions may not include architectural review or controls. The petitioner will have a reasonable opportunity to consider and respond to any such additional requirements prior to final action by the Council. If conditions are included as part of the rezoning, the petitioner shall agree in writing to all applicable conditions within thirty (30) days of the decision. The conditional use approval will not become effective until such written agreement is recorded in the Carteret County Register of Deeds. If the petitioner does not agree to the conditions in writing within thirty (30) days following the date of the decision, the conditional use permit will be deemed null and void.~~

~~In evaluating an application for the establishment of a conditional use district, it is appropriate for the Council to consider the following:~~

- ~~(A) The policies and objectives of the Morehead City Land Use Plan, particularly in relation to the use, proposed site, and surrounding area;~~

~~—(B) The potential adverse impacts to the surrounding area of, but not limited to, traffic, stormwater discharge, land values, and compatibility of land use activities.~~

~~In the review and approval of a conditional use district, emphasis will be given to evaluation of characteristics of the specific use proposed in relationship to surrounding properties. The Council may also consider the permitted and special uses allowed under existing zoning classification in determining the appropriateness of the conditional use rezoning proposal.~~

~~10-2.4 Effect of approval. If an application is approved, the conditional use district that is established and all conditions which may have been attached to the approval are binding on the property. All subsequent development and use of the property must be in accordance with the approved plans and conditions.~~

~~The intent of this type of zoning is to provide an alternate procedure for specific development proposals. It is intended that all property be rezoned only in accordance with firm plans to develop. Therefore, three (3) years from the date of approval, the Planning Board will examine development progress made in accordance with approved plans to determine if active efforts are proceeding. If it is determined by the Planning Board that active efforts to comply with the approved plan are not proceeding, a report may recommend that action be initiated to remove the conditional district in accordance with the amendment procedures outlined in Article 24.~~

~~10-2.5 Alterations to an approved conditional use district. 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 Article 24. However, minor changes in the detail of the approved plan which will not alter the basic relationship of the proposed development to adjacent property, which will not alter the uses permitted or increase the density or intensity of development, and which will not decrease the off street parking ratio or reduce the setbacks provided at the boundary of the site may be approved by the Land Use Administrator without going through the amendment process. The Land Use Administrator, at his discretion, may elect not to allow any proposal as a minor change and will, in that event, forward the detailed application for changes to the Planning Board and City Council for their consideration.~~

~~10-2.6 Issuance of a conditional use permit. If a petition for a conditional use district is approved, the City Council will issue a conditional use permit authorizing the use with any reasonable conditions that the City Council determines are necessary in promoting public health, safety, and general welfare and any other conditions deemed necessary. The conditional use permit shall become effective after being duly recorded in the Carteret County Register of Deeds.~~

~~10-2.7 Permitted special uses and development requirements. Potential uses which may be considered for a conditional use district are restricted to those permitted and special uses allowed in the zone assigned to that particular piece of property. If application is made for a conditional use, those uses listed as special uses will be exempted from the normal requirement for a special use permit and replaced with a conditional use permit. Uses permitted in conditional use districts are subject to all applicable development standards and requirements for that use listed in the corresponding general zoning district.~~

~~10-2.8 Zoning map designation. Following the Council's approval of a conditional use district, the property so zoned will be identified on the zoning maps by the appropriate parallel conditional use district designation. This designation is the general zoning district designation plus the letters "CU."~~

Amend sections that reference conditional-use zoning.

### 3-12 - The City Council

3-12.1 ~~Reserved. The City Council, in considering conditional use permit applications, acts in a quasi-judicial capacity and, accordingly, is required to observe the procedural requirements set forth in Articles 4 and 6 of this Ordinance.~~

3-12.2 In considering proposed changes in the text of this Ordinance or in the zoning map, including conditional zoning amendments, the City Council acts in its legislative capacity and must proceed in accordance with the requirements of Article 24.

3-12.3 Unless otherwise specifically provided in this Ordinance, in ~~acting upon conditional use permit requests or in~~ considering amendments to this Ordinance or the zoning map, the City Council shall follow the regular voting and other requirements as set forth in other provisions of the Town Code.

12-2.4 Development standards.

(C) Building height. No building or structure in the DB or CD district shall exceed a height of seventy (70) feet, ~~unless a conditional use permit has been issued by the council permitting an increased height of said building or structure.~~

**13-1 - Schedule of Development Requirements**

	Maximum Height† (Feet)
CD	70 <del>±</del>
DB	70 <del>±</del>

~~± — Increased height permitted with receipt of a conditional use permit from council (section 12-2.4(C)).~~

**15-6 - Landscape Plan Requirements**

15-6.1 When required. A landscape plan is required in the following situations:

(E) As part of a request for special-use ~~or conditional use~~ permit or conditional zoning district, when requested by staff, the Board of Adjustment, the Planning Board, or Council; and

**24-3 - Application Procedure**

Any application for an amendment to this Ordinance shall be filed with the administrator of this Ordinance at least twenty-eight (28) calendar days prior to the date on which it is to be introduced to the Planning Board. Subject to the length of the agenda and complexity of the application, late submittals may be placed on the meeting agenda with the approval of the Land Use Administrator. The administrator of this Ordinance shall be responsible for presenting the application to the Planning Board. Each application shall be signed and shall contain at least the following information:

24-3.5 A statement analyzing the reasonableness of the proposed rezoning shall be prepared for each petition for a rezoning or text amendment. ~~to a special or conditional use district, or a conditional district, or other small scale rezoning.~~

**A-4 - Graphic Materials Required for Plans**

A-4.2 Development site plans shall be drawn to scale, using such a scale that all features required to be shown on the plans are readily discernible. Very large developments may require that plans show the development in sections to accomplish this objective without resort to plans that are so large as to be cumbersome, or the objective may be accomplished by using different plans or plans drawn to different scales to illustrate different features. In all cases, the permit-issuing authority shall make the final determination whether the plans submitted are drawn to the appropriate scale, ~~but the applicant for a conditional or special use permit may rely in the first instance on the recommendations of the administration.~~

Ms. Watkins introduced the request by reviewing the draft ordinance. The proposed amendment has been reviewed by the City Attorney whose only recommendation concerning the draft provided to the Planning Board was the removal of section 10-5.2(m) which pertains to including a stormwater plan as an item that staff will request as part of a conditional zoning request.

Ms. Lumpkin inquired about the requirement for a community meeting to be held prior to the public meeting. Ms. Watkins explained that the community meeting requirement had been incorporated into other conditional zoning jurisdiction ordinances reviewed. Ms. Watkins said that following a community meeting, the developer would file a report with staff along with submission of their rezoning application. Staff would then forward the document to the Planning Board and Council for review. Ms. Watkins clarified that the community meeting concept is an optional requirement for the Planning Board's consideration. Mr. Saunders asked staff to define "community meeting". Ms. Watkins explained that, as written in the draft, a community meeting would be conducted by the developer with residents located within three-hundred feet of the parcel boundaries of a proposed rezoning to discuss a conditional zoning proposal. Mr. Saunders asked if the developer would have to provide a facility for the meeting. Ms. Watkins said there are many options for meeting. The current ordinance allows for meetings via web conferencing platforms. Ms. Lumpkin asked what advantages there are to such a meeting. Ms. Watkins said the advantage to property owners is that they become aware of a proposed project and the advantage to the developer is that they become aware of issues that they can address in advance to ensure the use is compatible with the surrounding area. Ms. Smith said she was in favor of the concept because the Planning Board at times is involved in hearing such neighborhood discussions.

Ms. Watkins said that the Planning Board could opt to recommend that the community meeting be moved to the list of items that may be requested rather than an automatic requirement. Mr. Saunders said he thought that would be better. Ms. Lumpkin said she agreed, she would prefer that it not be a requirement. Matt Johnson said he agreed. Mr. Johnson asked when the report would be required. Ms. Watkins responded that it would need to be submitted along with the rezoning application. Board members discussed agreement with moving the community meeting from the requirements in section 10-6 to the list of items that may or may not be required for submittal under section 10-5.

Andrea Smith made **MOTION**, seconded by Diana Tootle, to recommend approval of the text amendments and Resolution 2020-0015, with a revision to remove stormwater management plan from the list of items that staff may request as part of a request for conditional zoning [until such time as the Town has completed a stormwater ordinance with objective guidance for such a plan; previously the proposed 10-5.2(M)] and also to move the requirement for an applicant to conduct a community meeting in advance of the required Planning Board meeting to an optional item under the list of items which may be requested by staff, the Planning Board, or Council for inclusion as part of an application for conditional zoning. The motion carried unanimously.

***REQUESTS/COMMENTS:***

Ms. Watkins entered the attendance record and monthly reports for the record.

Ms. Watkins said the Town was able to secure a grant to assist with the remaining 160D compliance related ordinance updates. This will not be a complete ordinance rewrite, but the work will help to address the necessary updates. Once the draft has been completed, the draft changes will be brought to the Planning Board for review.

***ADJOURNMENT:***

There being no further requests or comments, the meeting adjourned at 7:15 p.m.

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Annie Bunnell, Secretary