

**River Bend Town Council
Work Session Minutes
March 9, 2023
Town Hall
7:00 p.m.**

Present Council Members: Mayor John Kirkland
James Castranova
Brian Leonard
Barbara Maurer
Buddy Sheffield
Jeff Weaver

Town Manager: Delane Jackson
Finance Director: Mandy Gilbert
Town Clerk: Kristie Nobles
Police Chief: Sean Joll
Town Attorney: Dave Baxter

Members of the Public Present: 41

CALL TO ORDER

Mayor Kirkland called the meeting to order at 7:00 p.m. on Thursday, March 9, 2023 at the River Bend Town Hall with a quorum present.

ADDITIONS/DELETIONS TO AGENDA

VOTE – Addition to Agenda

Councilman Weaver motioned to add Remove Councilman Castranova's Liaison Responsibilities as #8 and shift the agenda down. The motion carried unanimously.

VOTE – Approval of Agenda

Councilman Weaver motioned to accept the agenda as amended. The motion passed with four ayes and one nay with Councilman Castranova voting nay.

SPECIAL PRESENTATION – Audit Presentation for Fiscal Year 2021-2022

Ms. Phyllis Pearson, CPA with Pettway, Mills and Pearson presented the FY21-22 Audit Presentation. She said that her firm has issued an unqualified opinion on River Bend's FY 2021-2022 audit, which is the best rating an auditor can give. There was no management letter and no findings of material weakness. During the presentation, she noted that the Town's General Fund Balance had increased \$59,709 over the last year due in part to reduced expenditures and increased revenues. She noted that the percentage of available fund balance in the General Fund was 74% compared to 56% for last year.

VOTE – FY21-22 Audit Presentation

Councilman Leonard motioned to accept the audit as presented. The motion carried unanimously.

At this time, Councilman Sheffield thanked the Town's staff for a clean audit.

Discussion – Parks and Recreation Advisory Board Recommendations

Councilman Castranova stated that the Parks and Recreation Advisory Board has submitted two recommendations to the Council (see attached). He stated that the advisory board asked the Town Council to allow the advisory board to ask for sponsorships for Parks and Recreation sponsored events. Councilman Leonard asked if the Town has a formal policy and the Manager

stated that the Town does not have a policy, but the Council could create one. Councilman Weaver asked the Town Attorney if there are any legal restrictions with asking for sponsorships and he stated that it could be addressed in the policy.

Councilman Castranova stated that the Parks and Recreation Advisory Board also requested \$20,000 in additional funding for the 4th of July Celebration. He stated that the celebration would have fireworks and several live bands, along with alcohol being served at the River Bend Country Club. Councilman Castranova stated that the money that was allocated for the 2020 and 2021 events was moved to the general fund account. Councilman Sheffield asked if the advisory board intends on having the normal parade and events the morning of and Councilman Castranova stated that they do, with live bands at the Country Club starting at 2:00 p.m. Councilman Sheffield stated that he felt that would be a long day. Councilwoman Maurer stated that she is concerned with the amount of funds that the advisory board has requested, stating that the advisory board is all new members and have not completed any events yet. She also stated that for the amount of funds requested she would like for those funds to be spent on something permanent in town, for example lighting the walking path, not a one day event. Councilman Castranova stated that one of the members of the advisory board organized the Community Picnic on her own last year. Councilman Leonard stated that he does not want to lose the normal traditional 4th of July event that the town has had in the past. Councilman Castranova stated that the traditional event would be in the morning but the advisory board wants to add more to the event. Councilman Weaver stated that he thinks the proposed event could be scaled back to the traditional morning event with fireworks in the evening and that the event suggested would require additional law enforcement. Councilman Leonard stated that this is a large event for an advisory board that has vacancies and it would require additional volunteers. Councilman Castranova asked Police Chief Joll to describe the map from the 2021 event that was canceled due to weather. Chief Joll stated that the map included parking, staging of EMS and First Responders, which have to be present during the entire event. Councilman Castranova asked the Police Chief if he has any security concerns that would need to be addressed, and the Police Chief stated that with alcohol being served all day there would be many concerns. Chief Joll stated that there were many local agencies that were set up to assist the 2021 event. The Town Manager stated that an all-day event would be a lot for a very small staff. Councilman Castranova stated that he would present the recommendations from the Council to the Parks and Recreation Advisory Board.

Discussion – Scheduling a Meeting with Ellis Development

Councilman Leonard stated that Ellis Development had a meeting with River Bend residents and would like to meet with the new Town Council to answer any questions and discuss any concerns the Council may have. The Town Manager reviewed a calendar provided to the Council. Councilman Maurer stated that she felt it might be a good idea to meet with Ellis and they can clear up any misinformation. There was no action taken to schedule a meeting.

Discussion – CAC's Plantation Drive Median Study Presentation

Councilwoman Maurer stated that Tom Glasgow with the Craven County Cooperative Extension would present a study on Plantation Drive's median at the Council's regular meeting on March 16, 2023.

Discussion –Public Comment Policy

Councilman Castranova stated that he would like the Public Comment Policy revised to allow public comments at the work session meetings. Councilman Weaver stated he supported having public comments at both of the Council meetings each month. Councilman Sheffield stated that there are people who speak during that time with incorrect information and the Council cannot respond. Councilman Castranova asked the attorney if it was illegal for the Council to have a conversation during the public comment section. The Attorney stated that it is not illegal, although it can be very time consuming and depending on where the public comment item is on the agenda, the agenda may not be completed. Councilman Castranova suggested not stopping the time when someone is commenting which would include the response of the Council. Councilman

Leonard suggested that Councilman Castranova draft the changes he would like the policy to include for the Council to review.

Discussion – Encroachment Agreement with Metronet

The Manager stated that Metronet representatives would be at the next meeting to give a presentation on what Metronet offers. The Manager stated that they would offer services on every public right-of-way in River Bend. He also stated that private right-of-ways, which are mostly owned by HOA's, would need to complete individual agreements with Metronet. Councilwoman Maurer asked the Manager, if Metronet is approved, would Optimum and Metronet be available and the Manager stated they would be.

Discussion – Remove Councilman Castranova's Liaison Responsibilities

Councilman Weaver stated that he has a letter signed by Councilman Sheffield, Maurer, Leonard and himself that he would like to read and he stated it would be added in the minutes. Councilman Weaver read the attached letter. (see attached)

Councilman Castranova stated that there has been an ongoing feud with Councilman Weaver, stating that he has been "bullying" him and "stalking" Councilman Castranova's social media since January. Councilman Castranova stated that Councilman Weaver has started a feud with the other council members in the past. Councilman Sheffield stated that he has received numerous emails and phone calls from residents stating that Councilman Castranova has posted on social media that Councilman Sheffield has changed his opinion on the development of property in the North West Quadrant. Councilman Sheffield stated that he has not changed his opinion on that development. Councilman Leonard stated that he has had differences of opinion with many councilmembers and they have never disrespected each other. He stated that Councilman Castranova has disrespected the Council and the Council's processes. Councilwoman Maurer stated that she feels she has been accused of taking bribes and lobbying for Ellis Development. Councilman Leonard stated that Councilman Castranova is linking anything he can to Ellis Development and the conditional zoning ordinance proposed is not specifically for Ellis. Councilman Leonard asked Councilman Castranova if he has met with any developers. Councilman Castranova stated that he has met with one developer and that it is perfectly legal. Councilman Leonard asked if it is perfectly legal why are you chastising us for doing something that you have already done and not told most people here or the Council. Council Leonard told Councilman Castranova that he was a hypocrite.

Councilman Castranova left the meeting at 8:17 p.m. Since Councilman Castranova left the meeting unexcused, he will be counted as voting aye on all future motions for the remainder of this meeting.

Councilman Sheffield stated that he has had a sense of dread before coming to this meeting tonight and he has been on the Council for over 9 years and has never felt this way. He stated there has been a toxic environment created and he is concerned it will spread to the staff, and during the election, the morale among the staff was very low. He stated that he feels it has gotten worse since the election and he thinks Councilman Castranova came to the Council looking for a fight and there is nothing to fight over. Councilman Weaver stated that Councilman Castranova left the meeting unexcused, which would result in an affirmative vote for himself. The Attorney agreed.

VOTE – Remove Councilman Castranova's Liaison Responsibilities

Councilman Weaver motioned to remove Councilman Castranova's liaison responsibilities. The motion carried unanimously.

VOTE – Parks and Recreation Advisory Board Liaison

Councilman Leonard motioned to appoint Councilman Weaver as the Parks and Recreation Advisory Board liaison. The motion carried unanimously.

CLOSED SESSION

Councilwoman Maurer moved to go into a Closed Session under NCSG §143-318.11(a)(3) to discuss legal opinion on conditional zoning with the Town Attorney. The motion carried unanimously. The Council entered Closed Session at 8:21p.m.

OPEN SESSION

Councilman Sheffield moved to return to Open Session at 8:39 p.m. The motion carried unanimously.

VOTE – Legal Opinion on Conditional Zoning from the Town Attorney

Councilman Sheffield motioned to include the attorney's opinion on conditional zoning in the minutes for public record. The motion carried unanimously. (see attached)

REVIEW – Agenda for the March 16, 2023 Council Meeting

The Council reviewed the agenda for the March 16, 2023, Council Meeting.

ADJOURNMENT/RECESS

There being no further business, Councilman Sheffield moved to adjourn. The motion carried unanimously. The meeting adjourned at 8:46 p.m.



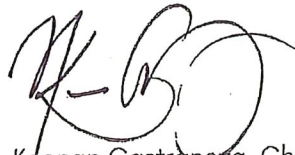
Kristie J. Nobles, CMC
Town Clerk

Official Recommendation

To: River Bend Town Council
From: River Bend Parks and Recreation Advisory Board
Date: March 6, 2023
Subject: Recommendation to change sponsorship policy

The Parks & Recreation Advisory Board held a general meeting on March 1, 2023. A quorum of four (4) board members were present and a motion was made to change the town's policy to allow the Parks & Recreation Advisory Board to enter into sponsorship agreements with local businesses so that businesses can donate goods and supplies for town events in exchange for sponsorship recognition.

After much discussion and consideration, three out of four board members (3/4) voted to recommend changing the town policy so that the Parks & Recreation Advisory Board can enter into sponsorship agreements with local businesses.



Keenan Castranova, Chair
Parks & Recreation Advisory Board

45 Shoreline Drive., New Bern, NC 28562 252-638-3870

riverbendpnra@gmail.com

www.riverbendnc.org

Official Recommendation

To: River Bend Town Council
From: River Bend Parks and Recreation Advisory Board
Date: March 6, 2023
Subject: Recommendation for Funding for July 4th Celebration

The Parks & Recreation Advisory Board held a general meeting on March 1, 2023. A quorum of four (4) board members were present and a motion was made to recommend additional funding in the amount of \$20,000 for the 2023 July 4th Celebration to include fireworks and live music.

There was discussion regarding the cancellation of the 2020 July 4th Celebration due to COVID and the subsequent cancellation of the 2021 July 4th Celebration for which the Town Council had allocated \$15,000 for fireworks and live music.

In consideration of their request, the Board was informed that the town never spent the \$4,100 allocated for the 2020 July 4th Celebration nor the \$15,000 for the 2021 July 4th Celebration.

The motion passed unanimously.



Keenan Castranova, Chair
Parks & Recreation Advisory Board

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Parks
&
Rec

March 09, 2023

To the Citizens of River Bend,

In light of recent events, members of this governing body feel it necessary to address the unacceptable conduct of one of our fellow members, that of Councilman James Castranova. As elected representatives of every citizen of the Town of River Bend (not just those who share our opinions and viewpoints) we have a duty to intervene when you feel your rights are being trampled on, especially when it's being done so by a member of this council.

Councilman Castranova has been cautioned in the past about his personal attacks against members of this body due to differing viewpoints and his inflammatory behavior that has caused unnecessary disruption between members of our community. This behavior is inconsistent with our adopted code of ethics and a direct threat to good governance.

On March 6, 2023, citizens of the Town of River Bend were engaging in a scheduled meeting with members of this Council when two members of the Parks and Recreation Advisory Board, which Councilman Castranova serves as liaison to, showed up and began inquiring as to the purpose of the meeting. Shortly after, Councilman Castranova let loose with a string of social media posts badgering and intimidating citizens that attended the meeting.

Furthermore, when a fellow councilman asked the town manager to look into the allegations of misconduct by members of the Parks and Recreation Advisory Board in an email, Councilman Castranova immediately forwarded the email to the two advisory board members in question. The forwarding of correspondence intended for the town manager and council members related to such a sensitive subject, while not illegal, serves as an illustration of impropriety. In addition to the above complaints, there have also been reports of Councilman Castranova overstepping his bounds as liaison to the Parks and Recreation Advisory Board and becoming directly involved in the conduct of their regular business.

The members of the Town Council of River Bend and its citizens should feel free to assert policy positions and opinions without fear of reprisal from anyone, especially from an elected member of the council. The members of this governing body will not tolerate the intimidation, badgering, bullying, or infringement of its citizens rights, nor will we stand silently by while we are accused of dishonesty and impropriety without cause.

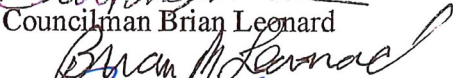
Therefore, upholding our oaths to you, the citizens of River Bend, the remaining members of this council stand in solidarity and condemn the recent behavior of Councilman Castranova. The outlined events have led the members of council to reconsider Mr. Castranova's appointment as liaison to not only the Parks and Recreation Advisory Board, but as liaison to any advisory board, until such time these unacceptable behaviors cease. It is our hope, moving forward we can find common ground and learn to work together to accomplish our goals and serve as a beacon of leadership for those we serve, regardless of whether or not we hold different points of view.

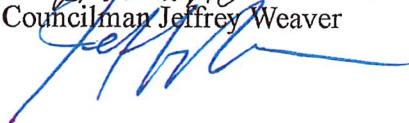
Respectfully,

Councilman Buddy Sheffield


Councilwoman Barbara Maurer


Councilman Brian Leonard


Councilman Jeffrey Weaver





David B. Baxter, Jr.
dbaxter@nclawyers.com

March 7, 2023

**PRIVILEGED AND CONFIDENTIAL
ATTORNEY/CLIENT COMMUNICATION**

River Bend Town Council
c/o Mayor John Kirkland

VIA: E-MAIL

Re: Draft Ordinance Amendment – Conditional Zoning
Our File: 67667.02

Dear Town Council:

I have been asked to review the most recent draft of the Town of River Bend's (hereinafter "the Town") proposed conditional zoning amendments to its Code of Ordinances. Specifically, I have been asked to review the proposed ordinance amendments for suggested changes, comment on enforceability of the proposed ordinance, and discuss various issues concerning the draft ordinance, including an analysis of litigation risk.

Below please find my written legal opinion based on my review and analysis of the Town's proposed draft amendments to include conditional zoning in its Code of Ordinances.

I. General Enforceability of Conditional Zoning in North Carolina

A. History and General Framework

Conditional zoning is a tool that has been used in local government zoning practices since the 1990s. The concept was tested and approved by North Carolina courts in 2001.¹ The result of the 2001 court decision was then codified into statutes in 2005.²

The use of conditional zoning allows greater flexibility in development of certain areas within a local government's jurisdictional limits by adding site-specific conditions to address any concerns expressed by the local government and the public. Conditional zoning would allow the Town to adopt a conditional zoning district that is parallel to a general zoning district previously established by the Town. This conditional district contains additional site-specific conditions that

¹ See *Massey v. Charlotte*, 145 N.C. App. 345, 550 S.E.2d 838, review denied, 345 N.C. 219, 554 S.E.2d 342 (2001).

² See N.C. Gen. Stat. § 160A-382(a) (2016).

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are not contained in the general zoning districts. These conditions may be more or less restrictive than those restrictions found in the corresponding general zoning district.³

B. Conditions

Generally, those impermissible conditions that would be considered illegal under a traditional rezoning are also considered illegal in conditional rezoning. One obvious illegal condition or denial is any decision based on race, religion, ethnicity, or other protected class of individuals. The same would be true in a conditional rezoning. The proposed draft ordinance amendments clarify that decisions or conditions based on these protected classes would be impermissible. Another illegal condition would be the condition that government subsidized housing be prohibited in the conditional zone. The North Carolina Fair Housing Act makes it illegal to base any land use decision or permitting decision on the fact that a proposed development contains affordable housing units for families or individuals with incomes below 80% of the area median income.⁴

There are also two additional statutory limits for conditional zoning placed on the potential conditions. The first is that the landowner and the Town have to mutually agree to the specific conditions imposed in the proposed conditional district. The second is that the conditions imposed in a conditional district are limited to those that (1) address conformance of the development and use of the site to local government ordinances and adopted plans and (2) those conditions that address “impacts reasonably expected to be generated by the development or use of the site.”⁵ Some of the allowed conditions would be things like use restrictions, the inclusion of site plans, and the addition of certain infrastructure as agreed between the landowner and the town. As stated above, the conditions contained in the conditional zoning district may be more or less restrictive than those found in the corresponding general zoning district.

Therefore, if a developer does not agree to a condition, the rezoning petition likely would not be considered complete since all conditions placed in the petition must be agreed upon by both the Town and the developer. If a condition is illegal, a developer can certainly challenge the fact that the Town insisted on an illegal condition. The best way to guard against this is to analyze each condition at the preliminary stage to ensure that each condition promotes those goals listed in N.C. Gen. Stat. §160D-703(b).

C. Judicial Review

I have been asked to give my opinion regarding various issues regarding conditional zoning if a conditional zoning is ever appealed through the judicial review process. Typically,

³ See *Rakestraw v. Knightdale*, 188 N.C. App. 129, 136, 654 S.E.2d 825, 830, *review denied*, 362 N.C. 237, 659 S.E.2d 739 (2008).

⁴ N.C. Gen. Stat. § 41A-4(g) (2020).

⁵ N.C. Gen. Stat. § 160D-703(b) (2020).

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general rezonings are considered legislative decisions and enjoy the presumption of validity if ever challenged in a court proceeding. In that situation, the government's decision is presumed to be valid, and the individual seeking review of the local government's decision must rebut the presumption of validity by showing that the local government acted arbitrarily or capriciously. Conditional zoning enjoys the same presumption of validity as a general matter. However, the presumption of validity no longer exists in situations involving spot zoning. A rezoning is considered spot zoning when it involves a relatively small area of land that is rezoned inconsistently with the surrounding areas.⁶

In the case of spot zoning, the Town would not have a presumption of validity, and the Town has the initial burden of proving that its zoning decision was reasonable.⁷ If a zoning amendment is considered spot zoning, and the presumption of validity no longer exists, this does put the Town in a less advantageous litigation position as compared to an instance that does not involve spot zoning. However, proving that the Town made its zoning decision based on reasonable considerations is a relatively low standard in comparison to other heightened standards, such as strict scrutiny constitutional context. Additionally, chapter 160D of the North Carolina General Statutes requires a determination of reasonableness be made by the Town Council prior to the adoption of any zoning map amendment.⁸ Specifically, the Town Council is required to adopt a reasonableness statement as follows:

- b) Additional Reasonableness Statement for Rezonings. - When adopting or rejecting any petition for a zoning map amendment, a statement analyzing the reasonableness of the proposed rezoning shall be approved by the governing board. This statement of reasonableness may consider, among other factors, (i) the size, physical conditions, and other attributes of the area proposed to be rezoned, (ii) the benefits and detriments to the landowners, the neighbors, and the surrounding community, (iii) the relationship between the current actual and permissible development on the tract and adjoining areas and the development that would be permissible under the proposed amendment; (iv) why the action taken is in the public interest; and (v) any changed conditions warranting the amendment.⁹

This reasonableness statement would be essential in proving that the Town acted in a reasonable manner in the case of spot zoning.

I have been asked to give an opinion as to whether the prior proposed traditional rezoning would have been considered spot zoning. Based on the proposal made by Ellis Development in its last rezoning petition, it is my opinion that a North Carolina court would likely find that the proposed changes to the zoning map would not be considered spot zoning due to the relatively large area and the relative consistency to other areas of the Town zoned in a similar fashion.¹⁰

⁶ See *Blades v. Raleigh*, 280 N.C. 531, 549, 187 S.E. 2d 35, 45 (1972).

⁷ See *Zopfi v. Wilmington*, 273 N.C. 430, 160 S.E.2d 325 (1968).

⁸ N.C. Gen. Stat. §160D-605(b) (2021).

⁹ *Id.*

¹⁰ See *Zopfi*, 273 N.C. 430, 160 S.E.2d 325 (case involving a forty-acre tract rezoned as commercial bordered by twenty acres zoned single-family residential); see also *Friends of Mt. Vernon Springs, Inc. v. Siler City*, 190 N.C.

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However, each instance is unique and I do not presume to predict the outcome of any court challenge with absolute certainty.

II. Analysis of Minor Modification Provisions

The North Carolina General Statutes allow minor modifications to the conditional district so long as the modifications do not change the use or uses listed in the conditional district or change the development density. The current draft proposed in the Town of River Bend allows for minor modification of no more than 5% of any feature. The proposed draft does contain the proper restriction that a minor modification may not be made that changes the uses or the density of the conditional district. The only requirement in the statutes for minor modification are that what is a minor modification must be defined and, as stated above, the modifications can not change the uses allowed or the overall density of the development.¹¹ Well-drafted ordinances include the specific features that may be altered and puts limits on those alterations. The draft ordinance amendments that the Town is proposing contain such restrictions in division (B)(8)(a)(1)-(4). The use of minor modifications by administrative staff is not required by statute and is optional. As I have previously stated, smaller local governments with relatively little development often do not have provisions allowing minor modification because minor modification is a method for promoting efficiency for the local government. If there is relatively little development, there are not a lot of requests to modify an approved project, which would otherwise require the local government to go through the entire ordinance amendment process each time there is a minor change. In a jurisdiction with multiple development projects, such frequent modification would consume a large amount of the governing body's time and resources.

III. Statutory Requirements and Ordinance Review

I have been asked to give my opinion as to what portions of the proposed draft ordinance amendments are required by statute if the Town allows conditional zoning within its planning jurisdiction. The only required provisions that must be in the conditional zoning regulations are (1) that the landowner must petition to have the property rezoned into a conditional district, (2) the conditions must be mutually agreed upon by the landowner and the Town and reduced to writing, and (3) that the approval process be the same as traditional rezonings pursuant to the legislative rezoning process. Additionally, the types of conditions are regulated generally by various language in 160D regarding what the conditions should be aimed at accomplishing as well as certain limits on minor administrative modification as discussed above.

When reviewing the ordinance, I have made the following comments and recommended changes:

App. 663, 660 S.E.2d 657 (2008) (case involving the rezoning of 1,079 acres from agricultural-residential to industrial) ("Here, the tract in question is approximately 1,076 acres. This tract is not 'a relatively small tract' as contemplated in *Blades* and the zoning activity did not 'constitute spot zoning as our courts have defined that term[.]').

¹¹ N.C. Gen. Stat. 160D-703(b) (2021).

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1. In section (A)(3), the ordinance only allows for uses to be equal to or more restrictive than those contained in the general zoning district that parallels the conditional zoning district. This is fully permissible, but I did want to note that for the Council.
2. In section (B)(5)(b), the ordinance states “conditional zoning district decisions are subject to judicial review using the same procedures and standards of review applicable to general use district zoning decisions.” I would change general use district to legislative such that provision states “conditional zoning district decisions are subject to judicial review using the same procedures and standards of review applicable to legislative zoning decisions.”
3. In section (B)(6)(h), it appears that the Planning Department can approve more restrictive or additional conditions added to the application; however, I believe these additional conditions would be a significant enough change such that the Planning Board would be required to comment on them and provide a resolution of plan consistency prior to consideration by the Town Council. I recommend that that language be stricken.
4. In section (B)(8)(4), the proposed amendments allow minor modification of landscaping requirements up to 10%. I believe this is inconsistent with the 5% limit found in the proposed amendments. I recommend changing this limitation to 5%.

IV. Conclusion

It is my opinion that as proposed, the draft ordinance amendments to include the use of conditional zoning is legally-permissible and enforceable. I have made my suggested modifications in the attached version in redline format. This legal opinion is rendered in the name of Sumrell Sugg, P.A. and may be relied upon by you as an opinion of counsel before any Court or any state or federal administrative agency.

Please review this opinion and let me know if you have any questions.

Sincerely,



David B. Baxter, Jr.
Town Attorney

PLANNING BOARD RECOMMENDATION

§ 15.02.140 CONDITIONAL ZONING DISTRICTS

A. Purpose.

1. Conditional zoning districts are applicable if the regulations and restrictions of a general use zoning district are inadequate to ensure the compatibility of the proposed development with the immediately surrounding neighborhood in accordance with the principles of the Town's Code of Ordinances. In these circumstances, a general zoning district designation allowing a use by right would not be appropriate for a particular property even though the use itself could, if properly planned, be appropriate for the property consistent with the objectives of the Code of Ordinances and adopted land development plan, comprehensive plan, transportation and corridor plans, and other land use and transportation policy documents.

2. The rezoning process established in this section provides for the accommodation of the uses by a reclassification of property into a conditional zoning district, subject to additional conditions which ensure compatibility of the proposed use with the use and enjoyment of neighboring properties. A conditional zoning district bears the same designation as a general use zoning district but is a conditional zoning district subject to additional conditions in which limited uses are permitted and that are contained in the ordinance approving the conditional zoning district. A conditional zoning district allows a particular use or uses to be established only in accordance with specified standards and conditions tailored to each individual development project. This is a voluntary rezoning 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.

3. Conditional zoning districts parallel general use zoning districts. Only those land uses (including uses by right and special uses as identified as in the Schedule of District Use Regulations) permitted in a general use zoning district to which a conditional zoning district corresponds shall be allowed. All requirements of any corresponding general use district and all other requirements of the Code of Ordinances apply to a conditional zoning district except to the extent that the approved rules, regulations and conditions included in the petition for rezoning are more restrictive than the general use district requirements.

B. Process required.

1. A person petitioning for rezoning of a tract of land may elect to request a conditional zoning district for that tract. The conditional zoning district application must specify the actual use or uses, and all other development regulations authorized by state law, which are intended for the property identified in the petition. The intended use or uses and development regulations must be permitted in the corresponding general use district.

2. The Town Council is to approve or disapprove the application on the basis of the specific use or uses and development regulations requested. Development in a conditional zoning district requires approval of a single application similar to a general use district rezoning application.

PLANNING BOARD RECOMMENDATION

3. Property may be placed in a conditional zoning district only in response to a petition signed by the owners of all the property to be included or by an agent authorized by all of the owners to file the application. A petition for conditional zoning shall include:

- a) A master site plan prepared in accordance with § 15.02.137 of the Code of Ordinances for a Master Land Use Plan for a Planned Development;
- b) Written supporting documentation that specifies the actual use or uses proposed for the property;
- c) Proposed rules, regulations, and conditions that, in addition to all predetermined requirements of this Code of Ordinances, will govern the development and use of the property; and
- d) A statement analyzing the reasonableness of the proposed rezoning.

4. During its initial review of a conditional zoning petition, which will follow the process as prescribed in §15.02.190-15.02.194 of the Code of Ordinances for traditional rezoning, the Planning Board shall consider whether or not a community informational meeting, to be organized, advertised, conducted and documented by the petitioner, would be beneficial to making project information available to those most likely to be impacted by the proposed zoning change. If the Planning Board concludes that a community informational meeting should be held, the petitioner shall conduct such meeting in accordance with the following provisions.

- a) The community informational meeting shall be held prior to the date of the next Planning Board meeting at which the petition will be reviewed. The meeting shall be held within seven miles of the Town of River Bend.
- b) Written notice of such a meeting shall be given by the petitioner in the same schedule and manner as prescribed in §15.02.191 (D) and §15.02.193 (A) of the Code of Ordinances for a zoning amendment and public hearing respectively.
- c) Within 10 days following the meeting, but prior to any further consideration by the town, the petitioner shall file a written report of the community informational meeting with the Zoning Administrator. The petitioner's 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 of the meeting; a summary of issues discussed at the meeting; and a description of any changes to the rezoning petition made by the petitioner as a result of the meeting. Additionally, the petitioner shall make available at the meeting a roster for all attendees to voluntarily sign so that a record of attendees may be created. The roster shall include a location for attendees to provide their name, mailing addresses, and telephone number. A copy of the roster of attendees shall be included in the report of the meeting.
- d) The purpose of the community informational meeting is for the petitioner to:

(1) Provide specific information and maps regarding the proposed development including but not limited to a description of the proposed zoning change, proposed use(s)

PLANNING BOARD RECOMMENDATION

of the property, the proposed density and intensity of land uses, the location and arrangement of the proposed land use(s) on the property, the proposed development schedule, and proposed regulations or conditions, in addition to those required by this Ordinance, that will govern the development and use of the property; and

(2) To receive comments and input from citizens likely to be impacted by the proposed zoning change and subsequent development of the property.

e) In the event the petitioner has not held at least one meeting pursuant to this section with 45 days of being notified that a meeting is required, the petitioner shall file a report with the Zoning Administrator documenting efforts that were made to arrange such a meeting and stating the reasons such a meeting was not held. The petitioner shall also notify the Zoning Administrator efforts to schedule a meeting. No further Planning Board action may be taken until the meeting has been conducted.

f) The adequacy of a meeting held or report filed pursuant to this section shall be considered by the Town Council but shall not be subject to judicial review.

5. Review and approval process. The review and approval process for conditional zoning district petitions involves a legislative hearing and legislative decision by the Town Council, following a recommendation by the Planning Board. The review of conditional zoning district petitions shall be undertaken in accordance with the provisions of this section.

a) In the course of evaluating the proposed use, the Town Council may request additional information deemed appropriate to provide a complete analysis of the proposal.

b) Conditional zoning district decisions are subject to judicial review using the same procedures and standard of review applicable to ~~general use district~~ legislative zoning decisions.

c) Conditional zoning district decisions shall be made in consideration of identified relevant adopted land use plans for the area, including, but not limited to, land development plans, comprehensive plans, strategic plans, district plans, transportation and corridor plans and other land development policy documents.

d) If the conditional zoning district application is approved, the Town Council shall authorize the requested use with reasonable conditions as mutually agreed to in writing by the applicant and Town Council and determined to be desirable in promoting public health, safety and general welfare.

6. Specific conditions applicable to the conditional zoning districts may be proposed by the petitioner or the town or its agents, but only those conditions mutually agreed to in writing by the town and the petitioner may be incorporated into the zoning regulations or permit requirements.

a) The conditional district rezoning application shall specify the use or uses that are intended for the property, as well as any additional conditions on the use of the property

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that the applicant may propose be conditions of the rezoning. Conditions and site-specific standards imposed in a conditional zoning district shall be limited to:

- (1) Those that address conformance of the development and use of the site to ordinances and officially adopted plans and
- (2) Those that address the impacts reasonably expected to be generated by the development or use of the site.
 - b) Any such conditions should relate to the relationship of the proposed use to surrounding property, proposed support facilities such as parking areas and driveways, pedestrian and vehicular circulation systems, screening and buffer areas, the timing of development, street and right-of-way improvements, water and sewer improvements, stormwater drainage, the provision of open space, the mitigation of environmental impacts, and other matters that the Town Council may find appropriate or the petitioner may propose.
 - c) Such conditions to approval of the petition may include dedication to the town or state, as appropriate, of any rights-of-way or easements for streets, water, sewer or other public utilities necessary to serve the proposed development.
 - d) No condition shall be less restrictive than the standards of the general use district or the standards of any overlay district that applies to the property.
 - e) No condition shall be made part of the application, or shall be attached to approval of the conditional zoning district, which specifies the ownership status, race, religion or character of the occupants of housing units, the minimum value of improvements, or any illegal exclusionary device; or which states that the use of the property will not be subject to regulations or restrictions set forth in the Code of Ordinances which would apply to the property in any event, such as the regulations for an overlay district which covers the property.
 - f) If for any reason any condition for approval is found to be illegal or invalid or if the petitioner should fail to carry out any condition in the written and signed agreement, the approval of the site plan for the district shall be null and void and of no effect and proceedings shall be instituted by the town to rezone the property to its previous zoning classification or to another zoning district.
 - g) The conditions shall be agreed upon, put in writing, and signed by both the petitioner and Town upon final approval of the rezoning by the Town Council.
 - h) After the town has delivered to the newspaper the notice of public hearing for the application, the applicant shall make no changes in the conditions ~~that are less restrictive than those~~ stated in the application, ~~including, but not limited to, smaller setbacks; more dwelling or rooming units; greater height; more access points; new uses; and fewer improvements. However, more restrictive conditions or additional conditions may be added to the application if the conditions are received by the Planning Department in writing and signed by all owners of the property at least ten working days before the date scheduled for final Town Council action on the application.~~

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7. If a petition 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 or master plan for the district, and any additional approved rules, regulations and conditions, all of which shall constitute the zoning regulations for the approved district and are binding on the property as an amendment to this Ordinance and to the zoning map.

a) If a petition is approved, only those uses and structures indicated in the approved petition and site plan shall be allowed on the subject property. A change of location of the structures may be authorized pursuant to division (B)(8) below provided that the change in building layout does not result in an increase in the number of structures.

b) Following the approval of the petition for a conditional zoning district, the subject property shall be identified on the zoning map by the appropriate district designation. A conditional zoning district shall be identified by the same designation as the underlying general district followed by the letters "CD" (for example, "R-20 (CD)").

c) No permit shall be issued for any development activity within a conditional zoning district except in accordance with the approved petition and site plan for the district.

d) Any violation of the approved site plan or any rules, regulations and conditions for the district shall be treated the same as any other violation of the Code of Ordinances and shall be subject to the same remedies and penalties as any such violation.

8. Alterations to approval. Except as provided in division (B)(8)(a) below, changes to an approved petition or to the conditions attached to the approved petition shall be considered a change to the conditional zoning district and shall be processed as a new conditional zoning application in accordance with the procedures set forth in this section.

a) The Zoning Administrator shall have the delegated authority to approve administrative minor modifications – limited to no more than 5% total changes to the originally approved site plan. The Zoning Administrator shall have no authority to amend the conditions of approval of a petition. Any decision by the Zoning Administrator must be in writing stating the grounds for approval or denial. Minor modifications shall be limited to changes that the Zoning Administrator determines would not:

1. Change the gross square footage of nonresidential development by more than 5%;
2. Change the lot coverage by more than 5%;
3. Change any use or density;
4. Adjust the landscaping requirements by more than ~~5~~10%;
5. Adjust the required parking more than 5%.

b) The Zoning Administrator, however, shall always have the discretion to decline to exercise the delegated authority either because he or she is uncertain about approval of the change pursuant to the standard or because a rezoning petition for a legislative hearing and Town Council consideration is deemed appropriate under the circumstances. If the

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Zoning Administrator declines to exercise this authority, the applicant may file a rezoning petition for a legislative hearing and Town Council decision in accordance with the provisions delineated in this ordinance.

c) Any request for an administrative modification shall be pursuant to a written letter, signed by the owners of all of the property affected by the proposed change, detailing the requested change. Upon request, the applicant shall provide any additional information as deemed necessary by the Zoning Administrator. Upon an approval of an administrative modification, the applicant shall file a sufficient number of copies of the revised site plan as deemed necessary by the Zoning Administrator.

d) If the Zoning Administrator denies approval of the requested administrative modification, the applicant may file a rezoning petition for a legislative hearing and Town Council decision in accordance with the provisions delineated in this ordinance.

9. Review of approved Conditional Zoning Districts. 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 two years after the date of approval of the petition, the Zoning Administrator shall examine and report to the Planning Board the progress made toward developing the property in accordance with the approved petition and any conditions attached to the approval.

a) If, following such examination and report of progress, the Planning Board determines that substantial progress has not been made in accordance with the approved petition and conditions, the Planning Board shall forward to the Town Council a report which may recommend that the property be rezoned to its previous zoning classification or to another zoning district. If the Town Council concurs with the Planning Board's recommendation, the Town Council may initiate the rezoning of the property in accordance with the procedures delineated in this ordinance.

b) If, upon written request of the developer or petitioner, the Planning Board determines that substantial progress has been made to develop the property, the Planning Board may recommend that an extension of time be granted. The Town Council, after reviewing the recommendation of the Planning Board, may approve an extension of time not to exceed an additional 12 months. Approval of such a time extension by the Town Council may be made without conducting a formal public hearing.

c) If, after the expiration of the original or extended time period, the Planning Board determines that no substantial progress has been made and the Town Council concurs with that determination, the Town Council shall proceed to: conduct a legislative hearing on the matter to evaluate whether or not another extension of time is warranted; or initiate the rezoning of the property to its previous zoning classification or to another zoning classification using the procedures delineated in this ordinance.

d) For purposes of this section, examples of substantial progress may include: the approval of construction plans for streets, utilities and other infrastructure; the initiation of land preparation activities such as clearing and grading; the initiation of the construction of

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the principal building(s); and the initiation of the construction of streets, utilities, other infrastructure or required site amenities.

Significant Dates:

- August 11, 2022-Town Council directs Planning Board to begin work on ordinance
- September 1, 2022-Planning Board selects Havelock ordinance as a template
- November 3, 2022-Planning Board discusses draft ordinance
- January 5, 2023-Planning Board discusses draft ordinance
- January 12, 2023- Town Council discusses draft ordinance
- February 2, 2023- Planning Board discusses and approves recommendation
- February 9, 2023- Town Council discusses recommendation
- February 16, 2023-Town Council discusses recommendation, directs Attorney to review