

LAND DEVELOPMENT ORDINANCE TEXT AMENDMENTS
Round 28 – Item B (Rezoning Procedures)
Town Council Meeting
December 11, 2014

EXECUTIVE SUMMARY

Staff has compiled a series of possible amendments to the Land Development Ordinance (LDO) in response to issues and concerns raised by Town Council, citizens and staff. Town Council conducted a public hearing on all Round 28 LDO amendment items (Items A through H) on May 22, 2014. Item G (Connectivity) was later removed and will be the subject of a council work session on land development issues on December 9, 2014. Items A, C, D, E, F and H were approved by council on August 14, 2014. The remaining item [(B) Changes to Rezoning Procedures] is the subject of this report.

OVERVIEW

SCHEDULE:

Public Hearing	May 22, 2014
Planning and Zoning Board Work Session	June 30, 2014
Planning and Zoning Board Meeting	July 21, 2014
Final Action by Town Council	December 11, 2014
Effective	March 1, 2015

SUMMARY OF PROPOSED AMENDMENTS

Item B Rezoning Procedures – Item B includes the following three components related to rezoning approval:

- 1) Timing and procedural requirements for neighborhood meetings;
- 2) Allowing a concept plan in conjunction with a conditional use rezoning case, and
- 3) Specifying the extent to which approved concept plans and preliminary development plans may be modified administratively at the time of development plan review.

FISCAL IMPACT: There are significant resource and budget implications for these LDO amendments compared to many other text amendments. Implementing these particular changes will place demands on staff which cannot be managed with existing staff given the significant increase in development activity, the cumulative impact of implementing a number of new development regulations and the increased level of customer inquiries. Assuming responsibility for the neighborhood meetings will require 12 additional evening meetings per year and will also require additional staff coordination and responses to increased public inquiries which would formerly have been made to applicants. Budget effects will also be felt with the new cost of mailing public notices for neighborhood meetings to all adjacent property owners within 800 feet of the various rezoning cases filed in a month. Additionally, the inclusion of rezoning concept plans will add considerable work as staff will need to review them to ensure that the development proposal is generally allowed under the LDO before accepting them as an enforceable zoning condition.

STAFF RECOMMENDATION: Staff recommends approval of the proposed Round 28 LDO text amendment Item B which adds optional concept plans as part of conditional use cases. Staff recommends that the change which requires Town coordination of neighborhood meetings be considered in conjunction with PL15-009, which requests a mid-year request for an additional planner in the Planning Department. The need for additional staff resources should be addressed prior to adding this additional staff responsibility.

Should council proceed with the neighborhood meeting integration, we then recommend a delayed effective date of March 1, 2015 to allow the necessary materials and administrative procedures to be developed, and for new schedules to be produced and provided to applicants before implementing the new process.

SUMMARY OF PROCESS AND ACTIONS TO DATE

Town Council Public Hearing (*May 22, 2014*)

PUBLIC HEARING

Ms. Suzanne Harris with the Homebuilders Association of Raleigh-Wake County expressed concern with additional costs associated with the larger notification area for rezonings and suggested putting a digital QR code on the signs.

DISCUSSION

There was discussion regarding the expansion of the rezoning notification area to 800 feet. It was suggested that staff create a compromise to address this issue, possibly limiting the distance once a minimum number of properties were included. Mr. Ulma stated that staff proposes to make the notification a Town responsibility, thus eliminating this as a responsibility for applicants. As a reminder and as discussed below, state law requires notice to be published at least ten days in advance of the public hearing and that notification be mailed only to the property owner and owners of abutting land.

Planning and Zoning Board Work Session (*June 30, 2014*)

No comments were made specific to this item.

Planning and Zoning Board Meeting (*July 21, 2014*)

There were questions and discussion regarding concept plans for rezoning cases. Staff emphasized that a concept plan would be voluntary and the all items shown would not necessarily be completely binding, as changes could be necessary at the time of site plan or subdivision approval in order to meet more detailed requirements of the LDO. Such changes are to be expected and all development details could not be examined during the rezoning process.

Recommendation: Approval, by a vote of 9-0

Changes Since Planning and Zoning Board Meeting

Staff has proposed changes to the text since the Planning and Zoning Board meeting to simplify and clarify the text for implementation purposes. This item has also been delayed pending discussion of staff resources to manage the new procedures.

DETAILS REGARDING PROPOSED LDO AMENDMENT

BACKGROUND

The proposed amendment addresses three components of the rezoning approval process that were discussed at the 2013 staff council retreat and a subsequent council work session held on October 17, 2013. These changes have tracked with Round 28 until July 2014, but have been held back due to staff concerns about the mechanics of the process as well as the workload implications.

1) Timing of Neighborhood Meetings

The first issue concerns the timing of neighborhood meetings required by the LDO for rezoning requests. Currently, the LDO requires applicants to hold independent neighborhood meetings with nearby property owners prior to submittal of a rezoning request. Council members expressed concern with the timing of the neighborhood meeting, preferring that it be held after submittal of the rezoning request, with staff in attendance.

As proposed, the neighborhood meetings for all rezoning applications received in a given month would be held concurrently, in a central location (typically at Town Hall). The date, place and time of the meetings would be scheduled by staff to occur within approximately 4 weeks of submittal of the rezoning application,

thus allowing time for review of the application and the mailing of notices to nearby property owners. At the neighborhood meetings, a general orientation meeting would be conducted by staff at the beginning of the session, followed by concurrent individual meetings for applicants and neighbors. The individual case meetings would still be conducted by the applicant, with staff and possibly council members (in compliance with open meeting law) present and available for questions. This procedure may be problematic if an applicant or representative has filed multiple rezoning applications.

The NC General Statutes require mailed notice of a rezoning public hearing to the owners of all properties abutting a parcel included in a rezoning request, while the LDO currently requires mailed notice to all property owners within 100 feet of the parcel(s) to be rezoned. It has been the practice of the Planning Department for a number of years to extend this boundary for notification to 400 feet. In response to council's request, staff has recently extended this voluntary notification boundary to 800 feet, and has encouraged applicants to do the same when mailing notices for neighborhood meetings. In response to concerns related to mailing costs associated with the extended notification boundary, and to ensure that consistent information is provided to citizens, the revised LDO text eliminates the requirement for the applicant to mail notices for their neighborhood meeting. Instead, it is proposed that the Town will mail notices.

2) Rezoning Concept Plans

The second issue concerns adding a "concept plan" as a zoning condition. Currently, all zoning conditions are written text, and plans or sketches are not allowed, except where needed as an exhibit to illustrate or clarify a specific written zoning condition, such as a complicated or enhanced perimeter buffer. *(An exception to the above is a rezoning to the Mixed Use District (MXD), which requires a preliminary development plan that includes a fairly detailed plan of the proposed development).* The LDO requires that zoning conditions must be more stringent or restrictive than standard LDO requirements. State law and the LDO require that conditions be limited to those that address conformance of the development and use of the site to the LDO and the Comprehensive Plan and those that address impacts reasonably expected to be generated by the development or use. Because they are conditions of the rezoning, they cannot be altered later except through a new rezoning process even if the LDO otherwise provides flexibility in meeting a requirement for developments without a specific zoning condition (e.g., buffers may generally be averaged, but if a written zoning condition requires a 30-foot buffer it may not be averaged unless the condition so specifies).

As currently proposed, inclusion of an illustrative concept plan as a zoning condition would be an option for conditional use zoning cases. Since the public hearing and prior Planning & Zoning Board discussions on this proposed amendment, the proposed text has been further modified to better define the expected information to be provided on a concept plan.

The concept plan could illustrate features such as the general layout of proposed land uses or buildings, access points and circulation for vehicles and pedestrians, stormwater management devices, and open spaces and buffers. Depending on the level of detail to which the applicant chooses to commit during the rezoning process, other standards that exceed requirements of the LDO could be considered for inclusion, such as increased buffer width and building setbacks, and minimum lot size.

With this amendment, the applicant would still have the option to offer written zoning conditions and those written zoning conditions, if accepted by the Town, would control future development for those aspects of the project, regardless of what an illustrative concept plan represents.

3) Modification of Concept Plans

The third issue concerns the extent to which rezoning concept plans may be modified after they are approved as part of a rezoning. At the time of site plan or subdivision plan approval, consistency with all written zoning conditions would be required. However, since detailed information regarding site constraints and engineering factors is frequently not known at the time of rezoning approval, some modifications or adjustments to a previously-approved concept plan are to be expected. The proposed amendment establishes the extent to which a site or subdivision plan could deviate from a concept plan approved as a part of a rezoning. As written, any change in the general location or character of the features depicted on the concept plan, except where such change is a reduction of density or intensity of use or is necessary to meet minimum development standards of the LDO, would require resubmittal as a new rezoning request.

PROPOSED TEXT

3.4 .1 REZONINGS: Rezoning Generally

(D) Procedure

(2) ~~Pre-Application Conference and Mandatory Neighborhood Meeting~~

~~Before filing an application, a private-party applicant ~~can~~ may request a pre-application conference with the Planning Director. See Section 3.1.5. ~~The applicant shall hold a meeting with the adjacent/nearby property owners that may be impacted by the proposed rezoning. At a minimum, invitations shall be sent by the applicant to all individual property owners within one hundred (100) feet of the area included within the rezoning case. The purpose of these meetings is to develop a plan that identifies residents' concerns prior to submittal of the rezoning application to the Town, and applicants may be required to tender proof of mailing during the rezoning case approval process.~~~~

(3) Traffic Impact Analysis (TIA).....

(4) Neighborhood Meeting

Neighborhood meetings for all rezoning applications filed and accepted as complete within a given month shall be held concurrently, within approximately 4 weeks of the published submittal deadline for rezoning applications, with the meeting date, time and location established and scheduled by staff. At the neighborhood meeting, each applicant shall conduct a meeting with any attendee interested in that proposed rezoning. The purpose of this neighborhood meeting is to ensure that nearby property owners are aware of the request and have an opportunity to inform the applicant of issues and concerns prior to the public hearing.

A general orientation meeting shall be conducted by staff for all applications at the beginning of each neighborhood meeting.

- ~~(4)~~ **(5) Public Notice.....**
- ~~(5)~~ **(6) Public Hearings.....**
- ~~(6)~~ **(7) Town Council Action.....**

3.4.2 REZONINGS: Rezoning to Conditional Use Districts

(C) Conditions

- (1)** The conditional use rezoning application shall specify the use or uses that are intended for the property or any use or uses that are prohibited, as well as any additional conditions on the use of the property that the applicant may propose be conditions of the rezoning. Conditions are limited to:
 - (a)** Those that address conformance of the development and use of the site to ordinances and officially adopted plans and
 - (b)** Those that address the impacts reasonably expected to be generated by the development or use of the site.

(2) An applicant may include a concept plan as a zoning condition in addition to written zoning conditions. A concept plan is a conceptual, illustrative plan that may not be used to eliminate or reduce any LDO or other requirement unless such elimination or reduction is designated as such and specifically provided for in this Ordinance. A concept plan shall show the overall site layout for the proposed development or a portion thereof including, but not limited to, development features such as:

- (a) Land uses;
- (b) Maximum number of residential units or non-residential square footage;
- (c) Any building setbacks and/or buffers that exceed minimum requirements of the LDO;
- (d) Natural open space areas to remain undisturbed;

- (e) Improved open space areas, including stormwater management devices; and
- (f) Vehicular and pedestrian access and circulation.

- 2) ~~(3)~~ (3) No condition shall be less restrictive than the standards of the parallel general use district or the standards of any overlay district that applies to the property.
- ~~(3)~~ (4) No condition shall be made part of the application, or shall be attached to approval of the conditional use 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 this Ordinance which would apply to the property in any event, such as the regulations for an overlay district which covers the property.
- (4) (5) After the Town has published the notice of public hearing for the application, the applicant shall make no changes in the conditions that are less restrictive
- ~~(5)~~ (6) The conditional use rezoning application shall include an affidavit listing all proposed zoning conditions and provisions and attaching any proposed concept plan and stating that:
 - (a) All zoning conditions and provisions are freely offered as proposed zoning laws, based solely on the property owner/applicant's independent judgment; and
 - (b) The property owner/applicant is not relying upon any statement by the Town staff or any member of the Town Council in connection with the decision to offer any zoning conditions, ~~or~~ provisions or concept plans; and
 - (c) The property owner/applicant understands that other parties that have standing in the rezoning proceeding are relying on the validity of the zoning conditions, ~~and~~ provisions and concept plans; and
 - (d) The property owner/applicant intends for all future owners of the property to be bound by the zoning conditions, ~~and~~ provisions and concept plans, should the Town Council adopt them as part of the rezoning; and
 - (e) The property owner/applicant will take all appropriate measures to ensure that future property owners are aware of the zoning conditions, ~~and~~ provisions and concept plans.

(D) Changes to Conditions of Approved Conditional Use District

(1) Written Zoning Conditions

Any change to ~~the~~ written conditions attached to an approved conditional use rezoning shall be considered a change to the conditional use district, and shall be processed as a new conditional use application in accordance with the procedures set forth in this Section 3.4.2.

(2) Concept Plan

Any change in the general location and character of the features depicted on the concept plan, except where such change is a reduction of density or intensity of use or is necessary to meet minimum development standards of the LDO, shall be considered a material change to the conditional use district, and shall be processed as a new conditional use application in accordance with the procedures set forth in this Section 3.4.2. The Planning Director shall determine whether any such change is a material change.

4.4.2 OVERLAY ZONING DISTRICTS: Mixed Use Overlay

(H) Changes to the Preliminary Development Plan Component of an Approved MXD District (Including Activity Center Concept Plans and Mixed Use Sketch Plans)

~~Staff may approve changes to approved preliminary development plans, ACCPs, MUSPs or PDD Master Plans if such changes fall within the criteria allowed for administrative approval under Section 3.19, Minor Modifications, and also provided that such changes do not reduce buffer widths or buffer standards adjacent to residential development and/or change the overall concept of the plan. Applications for such changes shall be considered using the process set forth in~~

Section 3.19. Proposed changes that do not fall within the criteria allowed for administrative approval in Section 3.19 may occur only through rezoning to the MXD district.

Any change in the general location and character of the features depicted on approved preliminary development plans, ACCPs, MUSPs or PDD Master Plans, except where such change is a reduction of density or intensity of use or is necessary to meet minimum development standards of the LDO, shall be considered a material change to the approved preliminary development plan, ACCP, MUSP or PDD Master Plan, and shall be processed as a new application in accordance with the applicable procedures set forth in Sections 3.4.3 and 3.4.5. The Planning Director shall determine whether any such change is a material change.