Additional Guidance for Conditional Use Districts

Overview

The goal of the remapping is to replace every legacy district on the zoning map with a UDO district. In the case of Conditional Use Districts, this task is somewhat complicated by the presence of zoning conditions that impose additional restrictions over and above the base ordinance requirements. When remapping a conditional use district, there are three legal options:

1. Replace the conditional use zoning with general use zoning. This is the cleanest method, and there is no ambiguity regarding the City's authority to do this. However, in many cases this approach may result in a substantial upzoning in terms of use, height and intensity, which could have adverse impacts on the neighbors.
2. Replace the base district but leave the conditions intact. The City Attorney's Office has determined that this is a legal exercise of the City's zoning power. This will be the approach used for the majority of conditional use districts.
3. Leave the current zoning intact. It is our hope that this option will never be necessary. However, if there is some bizarre interaction between the conditions and the base district that makes a base district swap untenable, then this is the only remaining option.

What is not an option is altering even one word of the zoning conditions. The alteration of a condition requires a rezoning with the assent of the property owner.

Methodology

The methodology for remapping conditional use districts is the same as the rest of the remapping effort, save for one additional step: reading and pondering the zoning conditions. Analyzing the appropriateness of individual conditions is not a remapping task. Rather, the review of the conditions needs to produce answer to two questions:

1. Could the conditions be eliminated through a general use rezoning without substantial impact on neighboring properties or infrastructure capacity?
2. If not, is there some reason why the conditions could not achieve their intent in conjunction with a UDO district?

If the answer to question 1 is yes, then general use zoning is preferred. If no, then option 2 is preferred, but only if the answer to question 2 is no. If the answer to question 2 is yes, then a decision will need to be made between options 1 and 3.

Replacing Conditional Use with General Use

As stated earlier, this is a preferred solution, but will likely only be used for a small minority of cases. Based on a review of past zoning cases, most sets of conditions will need to be retained because they address one or more of the following:

- Permitted uses.
- Building height and bulk.
- Setbacks.
- Buffers.
- Density or floor area.

Removing such conditions will in most cases result in a potential increase in development intensity, which should only occur through a rezoning process involving more direct neighborhood involvement. A potential exception would be a height limitation that is no longer needed under the UDO. However, if even one of the other conditions (say, density) needs to be retained, then they all do. Further, the fact that a project has been built on the site is not a sufficient reason for removing the conditions through general use rezoning.

The types of conditions that would be acceptable to eliminate would be conditions that (1) address a matter now adequately regulated in the UDO, such as maximum building height; or, (2) relate to a particular circumstance that has now been resolved. The sidebar below provides an example.

Sidebar: Obsolete Zoning Conditions

The following conditions are taken from case Z-37-94, and were applied to a property impacted by the planned extension of Edwards Mill Road. Now that the road is built, conditions 3 – 5 no longer serve a meaningful purpose. Condition 1 predates the current stormwater ordinance, and condition 2 is now considered to be legally invalid. Condition 6, concerning access, is adequately regulated in the UDO. General use rezoning would be preferred in this case.

1. Stormwater runoff following development of this property will not exceed runoff that would occur in an R-4 zoning district as per CR 7107.
2. For purposes of reimbursement, right-of-way and construction easement values will remain at R-4 values for Duraleigh Road.
3. If Edwards Mill Road extension has not been constructed by the time this property is submitted for site plan approval, the owner of the property shall be permitted to construct a two lane roadway in the right-of-way of Edwards Mill Road extension, said roadway to be used for access until such time that the completion of Edwards Mill Road extension has occurred.
4. The 115' right-of-way proposed for Edwards Mill Road extension will be dedicated to the City of Raleigh thirty days after the property has received site plan approval or subdivision approval, whichever first occurs, from the City of Raleigh.
5. The alignment of Edwards Mill Road extension through the property will be as shown on Exhibit "A" which is attached and made a part of this condition. Said alignment is as approved by the North Carolina Department of Transportation.
6. No more than one full access driveway will be permitted on Edwards Mill Road extension as indicated on Exhibit "A" which is attached and made part of this condition.

Verifying District-Condition Consistency

In reviewing past zoning cases, we have yet to uncover an instance in which the conditions could not work with a UDO district. However, reviewers need to be alert to the possibility and flag any issues for resolution. One potential issue would be a district with such a restrictive list of permitted uses that the list no longer works with the permitted uses in the corresponding UDO district. The work-around here may be to choose a different UDO district with a more expansive permitted use list. If, during the course of evaluation, conditions are identified that have some conflict with the UDO districts such that remapping is considered impractical, such conditions should be brought to the attention of Ken and Travis for further discussion.

Thoroughfare District "Master Plans:" Brier Creek, Riverside, Etc.

On a large tract, Thoroughfare District permits most any use, and as a result there are examples of large tracts of land "mass-zoned" to TD that were later developed for a variety of uses, including residential communities. The most significant of these is Brier Creek (Z-65-96, Z-86-98). A smaller but still significant example, known as the Riverside subdivision, is located east of Capital Boulevard and north of Perry Creek Road (Z-35-89, Z-62-95). There are other, smaller examples, mostly off of US 70 in northwest Raleigh.

These cases are problematic as the current zoning would permit the development of incompatible uses in these areas. However, replacement of the current TD zoning with something more reflective of the current use pattern theoretically represents a significant downzoning. Rezoning these areas may, in some cases, best be done through a general use rezoning that removes conditions. Because of these considerations, additional targeted outreach is necessary to determine the best course of action.

Outreach to both the HOAs of these areas as well as their respective CACs should be undertaken prior to embarking on the remapping of these neighborhoods. Two meetings are suggested: an initial meeting to discuss the topic and present the options, and a second meeting to present an actual remapping proposal for feedback. Preparation for the first meeting should include the presentation of background information including maps of the prior zoning cases, a summary of the conditions, and some analysis as to why remapping to a set of UDO districts is better than simply substituting CX for TD.

Problems

There are various problems that may be encountered during the remapping process for conditional use district cases. The following is a running list which may be added to over time:

1. **Missing exhibits:** Many cases, particularly those where a large area was rezoned TD and conditions tied to a map were used determine permitted uses and densities, cannot be understood without the accompanying exhibit. However, some exhibits were never digitized and loaded onto the P drive. These exhibits will have to be recovered from the paper files. For cases older than 2000, that means pulling records from dead storage. These exhibits should be scanned and added to the P drive so that we don't have to pull records again.
2. **Nonsensical boundaries:** Some large tracts were rezoned repeatedly over time as either land was assembled piecemeal, or conditions were adjusted. Post-development, the lot pattern now

bears no relationship to the CUD boundaries. This is evident in several developments off of US 70 in the western part of the City. General use rezoning, where appropriate, should be strongly considered as one option to repair these defective boundaries.

There will likely be many more problems that are encountered in the course of the condition use district rezoning team's work. Frequent meetings with Christine, Ken, Ira and Travis may be necessary to resolve these issues as they arise.

Documentation of Decisions

We will be making hundreds of decisions at a staff level as part of the remapping. Planning Commission and City Council might ask tough questions about any of them. We must take the steps necessary to have real, substantive answers at our fingertips.

Any decision to replace a conditional use district with a general use district requires particularly careful documentation, including a justification of why each condition is no longer necessary. If the choice is between a bad zoning boundary and the removal of seemingly outdated conditions, then the reasoning as to why the general option was chosen, and the balancing that was done in making that determination, needs to be put down in writing. We must be able to account for every conditional to general use rezoning.

In addition, a running Problem Log should be kept for any issues that remain unresolved. Regular meetings to go through the problem log and resolve outstanding issues will be held and the resulting decisions further documented in writing.