



City of Raleigh *North Carolina*

City Council Adopts Revisions to the Rezoning Process

A recently approved text change (TC-2-10) revises the rezoning process. The revisions are effective September 1, 2010 (for zoning cases to be heard at the January 2011 Public Hearing). The adopted changes to the CUD rezoning process alter the timing of the neighborhood meeting for all conditional use requests, require additional submittal information, refine timing for submittal of conditions, and alter the review time for the Planning Commission.

Revisions to the rezoning process include the following:

Neighborhood Meeting:

- Revises the timing of the required neighborhood meeting for conditional use district cases to be held prior to submittal of the rezoning petition.

Petition Submittal Requirements:

- Draft findings of a Trip Generation Comparison.
- A Report of the required Neighborhood Meeting for CUD cases.

Time Period for Planning Commission Deliberation:

- Reduces the time period for Planning Commission deliberation from 120 days to 90 days (120 days for a PD District).
- Allows the City Council to approve time extensions for additional deliberation, extension requests not to exceed 45 days.

Timing of Submitting Changed Conditions:

- One (1) set of changed conditions between petition submittal and 5 weeks prior to the public hearing.
- One (1) set of changed conditions between the public hearing and the first time the case is deliberated by the Planning Commission.
- No limitation on the number of sets of changed conditions during Planning Commission deliberation.

- One (1) set of changed conditions during City Council deliberation – this set of changed conditions shall be submitted within 15 days (45 days for a PD District) following the receipt of the Planning Commission's Recommendation.

For more information please visit our website: ww.raleighnc.gov/zoning.

For additional information on the revised rezoning process, please contact The Planning Department (919) 516-2620.

TC-2-10 REZONING PROCESS

(CP Committee Recommendation)

Amends the City's rezoning process as follows:

Neighborhood Meeting for CUD cases:

- Revises the timing of the required neighborhood meeting for conditional use district cases from being held a minimum of 6 weeks prior to the public hearing to being held prior to submittal of the rezoning petition.

Petition Submittal Requirements:

- Draft findings of a Trip Generation Comparison unless the City agrees in advance of submitting the application that such analysis is not warranted.
- 3rd Party Rezoning - Per SB 1027, effective 6/16/09, applicants filing a zoning map amendment on a parcel of land not under the ownership of the applicant(s) shall certify to the City, at the time of filing and following newspaper publication, that the owner of the parcel of land as shown on the County tax abstract at the time of filing has received actual notice of the proposed zoning map amendment, which notice shall also include the date of the scheduled public hearing.
- A Report of the required Neighborhood Meeting for CUD cases.

Time Period for Planning Commission Deliberation:

- Reduces the time period for Planning Commission deliberation from 120 days to 90 days (120 days for a PDD).
- Allows the City Council to approve time extensions for additional deliberation, extension requests not to exceed 45 days.

Expand the list of prohibited zoning conditions to include:

- right-of-way reimbursement values
- prohibitions of cross-access or public street connections or extensions
- submittal of a traffic impact analysis or trip generation study
- site plans, renderings or other images unless all elements of the rendering include associated written conditions.

Timing of Submitting Changed Conditions:

- One (1) set of changed conditions between petition submittal and 5 weeks prior to the public hearing – This set of changed conditions may remove conditions, include less restrictive conditions or include more restrictive conditions.
- One (1) set of changed conditions between the public hearing and the first time the case is deliberated by the Planning Commission – In the event the applicant will be submitting changed conditions during this time period, the applicant is required to request Planning Commission deferral at the public hearing.
- No limitation on the number of sets of changed conditions during Planning Commission deliberation
- One (1) set of changed conditions during City Council deliberation – this set of changed conditions shall be submitted within 15 days (45 days for a PDD) following the receipt of the Planning Commission's Recommendation.

Proposed Effective Date:

- September 1, 2010 – Beginning of the filing period for the January, 2011 public hearing



Certified Recommendation of the City of Raleigh Planning Commission

SUBJECT: TC-2-10/Conditional Use Rezoning Process

REQUEST: Amends the City's rezoning process related to required neighborhood meetings, trip generation study, third party rezonings, time period for Planning Commission deliberation, prohibitions on certain zoning conditions, and specific time periods for submitting revised and amended zoning conditions.

RECOMMENDATION: That this text change be denied; and that the Planning Commission host a workshop on the conditional use rezoning process with the RCAC, land use attorneys, land planners and other interested citizens familiar with the current process.

**FINDINGS AND
REASONS:**

The Planning Commission believes that the changes proposed by TC-2-10 will not produce better outcomes:

- The proposed text change fails to afford the necessary time for the Planning Commission to resolve land use compatibility issues and their potential impacts associated with many rezoning requests;
- The current law promotes continued negotiation between the applicant and affected property owners without limitations of time and new sets of conditions in order to assure that the case may evolve to its full potential; and
- The current law allows zoning conditions to address all neighborhood concerns regarding such things as building materials.

It is the Planning Commission's desire that prior to making major changes to the conditional use rezoning process the Commission be given an opportunity to fully review the current process. This review will be in the form of a workshop, hosted by the Planning Commission, with invitations extended to the RCAC, land use attorneys, land planners and other interested citizens familiar with the current process.

To PC: January 26, 2010
Case History: 1/26/10, referred to the Committee of the Whole. 3/2/10, 4/6/10, 5/4/10, reviewed by the Committee. 5/4/10, committee recommends denial and directs staff to schedule a Planning Commission workshop on the conditional use rezoning process.

To CC: May 18, 2010

City Council Status: _____

Staff Coordinator:Greg Hallam

Motion: Bartholomew
Second: Fleming
In Favor: Bartholomew, Batchelor, Butler, Fleming, Haq, Mattox, Mullins, Sterling
Opposed: Anderson
Excused:

This document is a true and accurate statement of the findings and recommendations of the Planning Commission.

Signatures:	(Planning Dir.)	(PC Chair)
	_____	_____
	date:_____	date:5/12/10_____



Text Change Staff Report: TC-2-10

APPLICANT: City of Raleigh
CONTACT PERSON: Greg Hallam
CONTACT INFORMATION: 919-516-2636
**PLANNING COMMISSION
RECOMMENDATION
DEADLINE:** May 11, 2010

HISTORY / OVERVIEW:

Amends the City's rezoning process as follows:

Neighborhood Meeting for CUD cases:

- Revises the timing of the required neighborhood meeting for conditional use district cases from being held a minimum of 6 weeks prior to the public hearing to being held prior to submittal of the rezoning petition.

Petition Submittal Requirements:

- Draft findings of a Trip Generation REport unless the City agrees in advance of submitting the application that such report is not warranted.
- 3rd Party Rezoning - Per SB 1027, effective 6/16/09, applicants filing a zoning map amendment on a parcel of land not under the ownership of the applicant(s) shall certify to the City, at the time of filing and following newspaper publication, that the owner of the parcel of land as shown on the County tax abstract at the time of filing has received actual notice of the proposed zoning map amendment, which notice shall also include the date of the scheduled public hearing.
- A Report of the required Neighborhood Meeting for CUD cases.

Time Period for Planning Commission Deliberation:

- Reduces the time period for Planning Commission deliberation from 120 days to 90 days (120 days for a PDD).
- Allows the City Council to approve only one (1) time extension for additional deliberation, not to exceed 45 days.

Expand the list of prohibited zoning conditions to include:

- the future sale or marketing of property
- building materials
- right-of-way reimbursement values
- prohibitions of cross-access or public street connections or extensions
- limitations on the hours of refuse collection
- submittal of a traffic impact analysis
- site plans, renderings or other images.

Timing of Submitting Changed Conditions:

- One (1) set of changed conditions between petition submittal and 5 weeks prior to the public hearing – This set of changed conditions may remove conditions, include less restrictive conditions or include more restrictive conditions.
- One (1) set of changed conditions (more restrictive) between the public hearing and the first time the case is deliberated by the Planning Commission – In the event the applicant will be submitting changed conditions during this time period, the applicant is required to request Planning Commission deferral at the public hearing.
- Two (2) sets of changed conditions (more restrictive) during Planning Commission deliberation – the second set of changed conditions shall be submitted within 15 days (45 days for a PDD) following PC deliberation of the first set of changed conditions.
- One (1) set of changed conditions (more restrictive) during City Council deliberation – this set of changed conditions shall be submitted within 15 days (45 days for a PDD) following the receipt of the Planning Commission’s Recommendation.

ALTERNATIVES

CONSIDERED: There were no alternatives scoped for this text change. The City Council directive asked staff to analyze a pre-submittal requirement for the neighborhood meeting. Similarly, staff did not explore an alternative to language drafted in response to SB 1027, as non-compliance with this State legislation could pose legal issues with the validity of notification of third party rezonings.

SCOPING OF IMPACTS:

Potential adverse impacts of the proposed text change have been identified as follows:

1. An applicant would be required to meet with the neighborhood to discuss the rezoning application prior to submittal. This would advance the neighborhood meeting by approximately two months.
2. The finite timeframes for submitting finalized conditions and planning Commission deliberation would result in more meaningful interaction between applicants and neighbors in a shorter period of time.

The adverse impacts of taking no action (retaining the existing regulations) have been identified as follows:

1. The conditional use rezoning process would remain as the status quo. A neighborhood meeting would not be required prior to submittal. Conditions would be reviewed on a case by case basis. Timelines would not be established for the submittal of conditions, nor the number of times conditions are submitted for review.
2. No action as it relates to SB 1027 (notification of third party rezonings) could pose legal issues with the City’s non-compliance with State regulations.

**ORDINANCE NO. (2010) 742 TC 333
TC-2-10**

**AN ORDINANCE TO ESTABLISH A PROCESS FOR THE REVIEW AND
OFFICIAL ACCEPTANCE OF ZONING CONDITIONS OFFERED AS PART OF
A CONDITIONAL USE REZONING PETITION, CLARIFICATIONS ON VALID
CONDITIONS AND REVISIONS TO NEIGHBORHOOD MEETING
REQUIREMENTS AND SUBMITTAL REQUIREMENTS FOR REZONINGS**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF RALEIGH,
NORTH CAROLINA that:**

Section 1. Amend Section 10-2165 by deleting subsection (b) in its entirety and substituting in lieu thereof the following:

“(b) Conditional Use Zoning Petition.

(1) General requirements.

A conditional use zoning petition *shall* only be submitted from all the *owners* of the *property* included in the petition. The petition must specify the use or uses prohibited or the use or uses allowed, including the maximum number of *dwelling* or *rooming units*, and all land development regulations which are requested for the *property* submitted for rezoning. The requested use or uses must be permitted in the corresponding general use district except for conditional use overlay districts authorized by this chapter. All those regulations which apply to the corresponding general use zoning district are the minimum requirements in the conditional use zoning district except for conditional use overlay districts authorized by this chapter. In addition, conditions which represent greater restrictions on development and use of the *property* than would apply in the corresponding general use zoning district, or which involve subdivision, stormwater control, flood protection, or other limitations on land which *may* be regulated by *City* and State law, *may* be specified in the petition. Zoning conditions associated with a *lot* line common to the subject *property* and an adjacent *property(ies)* *shall* reference the Deed Book / Page Number or recorded Book of Maps / Page Number of the associated adjacent *property*.

(2) Prohibited zoning conditions.

No condition *may* be made part of the petition which specifies ownership status, race, religion, or character of occupant, minimum value of improvements, or any other exclusionary device. No condition

shall be submitted that proposes to regulate right-of-way reimbursement values, prohibitions of cross-access or public street connections or extensions, submittal of a traffic impact analysis, nor *shall* any site plans, renderings or other images be submitted as part of the rezoning application with the exception of those associated with a Planned Development Conditional Use Overlay District Master Plan unless all elements of the site plan, rendering or image graphically illustrate the written text of the zoning conditions in which case the written zoning conditions *shall* remain as the controlling instrument. No condition *may* be made part of the petition which duplicates an existing *City Code* requirement. For any condition specified on the petition which *may* affect potential compliance with the requirements of the Subdivision/Site Plan Standards Ordinance, or any other *City* ordinance on the *property* requested for rezoning, proper submittal of information and review *shall* be requested by the Planning Department, including requirements under chapter 3 of this Part, prior to a *City Council* decision on the rezoning.

(3) Neighborhood meeting.

Within six (6) months prior to the submittal of any conditional use zoning petition, the applicant *shall* conduct a meeting with the adjacent/nearby property owners that may be impacted by the proposed rezoning. At a minimum, meeting notices shall be mailed to the *owners* of *property* adjacent to and within one hundred (100) feet (not counting *street rights-of-way*) on all sides of the parcel, or *lot*, or tract proposed to be rezoned. At least ten (10) days prior to the meeting date the neighborhood meeting notices *shall* be sent by first class mail or certified mail return receipt. If notification is to be by first class mail, the applicant *shall* deliver the sealed, addressed, stamped envelopes to the Department of City Planning together with a roster of all addressees prior to the aforementioned ten-day period. If notification is to be by certified mail return receipt, notice of the meeting shall be provided to the Department of City Planning at least ten (10) days prior to the scheduled meeting date and copies of the return receipts *shall* be given to the Department of City Planning at the time of submittal of the conditional use zoning petition. A report of the meeting, made by the applicant, *shall* be given to the Department of City Planning at the time of submittal of the conditional use zoning petition. The report *shall* include, among other things: a list of those *persons* and organizations contacted about the meeting, and manner and date of contact, the date, time, and location 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 petitioner *following* such meeting. The Department of City Planning is directed not to accept a conditional use zoning petition if the applicant has failed to conduct the meeting, comply with the required meeting notification or submittal of the meeting report as required above.

(4) Changes to zoning conditions.

During the review and deliberation of a conditional use rezoning petition from the time of submittal to the Monday preceding the five (5) week period prior to the scheduled public hearing, specified conditions *may* be removed or changes to the specified conditions *may* be added which are less restrictive. During the review and deliberation of a conditional use rezoning petition beginning from the date five (5) weeks prior to the scheduled public hearing, no changes to the conditions specified *may* be added to the petition which are less restrictive, including but not limited to less setback, more *dwelling* or *rooming units*, greater height, more *access points*, new uses, and fewer improvements. However, more restrictive conditions or additional conditions, as well as a reduction in the size of the request and a change to a higher zoning classification, *may* be added *in writing* to the signed petition by all *owners* of *property* covered by the original petition.

At least ten (10) calendar days prior to the submittal of any change to the zoning conditions an unsigned draft copy of the proposed changed conditions *shall* be submitted to the Department of City Planning for review and comment. The Department of City Planning is instructed not to accept any changes to the zoning conditions other than those time periods specified below.

- a. One (1) set of changes to the zoning conditions between the filing period deadline and five (5) weeks prior to the date of the scheduled public hearing.
- b. One (1) set of changes to the zoning conditions following the public hearing and the date scheduled for Planning Commission or Planning Commission committee deliberation for the first time. In the event that an applicant desires to submit changes to the zoning conditions for this time period, the applicant *shall* be required to request a Planning Commission deferral of the case at the public hearing.

- c. No limit on the sets of changes to the zoning conditions following the first deliberation of the zoning case by the Planning Commission or Planning Commission committee. However, no set of changes to the zoning conditions shall be considered and deliberated on by the Planning Commission unless an unsigned draft copy of the new set of conditions has been submitted at least ten (10) calendar days prior to the date of the scheduled Planning Commission or Planning Commission committee meeting.

In no case shall changes to the conditions be accepted following an action by the Planning Commission and prior to the Planning Commission's Certified Recommendation being received by the City Council other than nonsubstantive, technical revisions to the text of the zoning conditions.

- d. One (1) set of changes to the zoning conditions within fifteen (15) calendar days [forty-five (45) calendar days for a Planned Development Conditional Use Overlay District] *following* the *City Council* meeting at which the recommendation of the Planning Commission is first received by the Council and not returned to the Planning Commission by the *Council*, provided that any change is submitted at least two (2) normal working days, excluding Saturday and Sunday and legal holidays, before the date of the final *City Council* action. Any changed zoning conditions made following the recommendation of the Planning Commission *may* be referred to the Planning Commission for further review. If so, the Planning Commission *shall* report back to the *City Council* within thirty (30) days of the *City Council* referral, or it *shall* be construed that they have no comment.

Signed conditions *may* be submitted by facsimile or electronic mail so long as the original signed petition is received by the Planning Director at least twenty-four (24) hours before the meeting where final *City Council* action is taken; provided that the electronic *signature* is (1) unique to the *person* using it; (2) capable of certification; (3) under the sole control of the *person* using it; (4) linked to the same page as the petition. The day of the *City Council* action *shall* not be counted as a normal workday when applying this rule. Such changed conditions *may* be referred to the Planning Commission for further review. If so, the Planning Commission *shall* report back to the *City Council* within thirty (30) days of the *City Council* referral, or it *shall* be construed that they have no comment.”.

Section 2. Amend Section 10-2165(c)(1), **Filing dates**, first sentence of the first paragraph, by deleting the word “must” and substituting in lieu thereof “shall” and by deleting the language “by the third Friday of the month” and substituting in lieu thereof “between the first working day of the month and 12:00 noon on the third Friday of the month”.

Section 3. Amend Section 10-2165(c)(2), at the end of the sentence within the second paragraph, to add the following new language:

“; and the draft findings of a Trip Generation Comparison between the existing and proposed zoning districts, as determined by the Public Works Director or his designee, unless the Public Works Director or his designee agrees in advance of submitting the application that such analysis is not warranted.”.

Section 4. Amend Section 10-2165(c) to add a new subsection (3) which shall read as follows:

“(3) Amendments.

From the date one (1) week following the filing period deadline, no amendment to the petition may be added which results in an inclusion of additional property or a change to a lower zoning classification.

Section 5. Amend Section 10-2165(h)(3), **Post-hearing action and time limits**, third sentence, to delete the words “one hundred and twenty (120) days of the public hearing” and substitute in lieu thereof “ninety (90) days [one hundred and twenty (120) days for a Planned Development Conditional Use Overlay District] of the public hearing”.

Furthermore, amend Section 10-2165(h)(3), fourth sentence, by adding the phrase “, each request not to exceed a period of forty-five (45) days,” between the words “time” and “which”.

Section 6. Amend Section 10-2165(e), **Notification of Affected Landowners**, by combining the last two (2) sentences into one complete sentence; eliminate the period after the second to the last sentence and begin the first word of the last sentence with a lowercase letter.

Furthermore, add of new second paragraph to this subsection, 10-2165(e), which shall read as follows:

“Except for zoning map amendments made by the *City*, applicants filing a zoning map amendment on a parcel of land not under the ownership of the applicant(s) *shall* certify to the *City*, at the time of filing, that the owner of the parcel of land as shown on the County tax abstract at the time of filing has received notice of the proposed zoning map amendment. Subsequently, following the newspaper publication of the notice of public hearing of the said zoning map amendment, the applicant(s) shall again certify to the *City* that the owner of the parcel of land as shown on the County tax abstract at the time of filing has received a copy of the notice of public hearing.”.

Section 7. All laws and clauses of laws in conflict herewith are hereby repealed to the extent of said conflict.

Section 8. If this ordinance or application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given separate effect and to the end the provisions of this ordinance are declared to be severable.

Section 9. This ordinance has been adopted following a duly advertised joint public hearing of the Raleigh City Council and the City Planning Commission following a recommendation of the Planning Commission.

Section 10. This ordinance has been provided to the North Carolina Capital Commission as required by law.

Section 11. This ordinance shall be enforced by law as provided in N.C.G.S. 160A-175 or as provided in the Raleigh City Code. All criminal sanctions shall be the maximum allowed by law notwithstanding the fifty dollar limit in G.S. 14-4(a) or similar limitations.

Section 12. This ordinance shall become effective September 1, 2010.

ADOPTED: June 1, 2010
EFFECTIVE: September 1, 2010

DISTRIBUTION: Planning – Silver, Bowers, Crane, Hallam, Brandon, Becker
Transportation – Lamb
City Attorney – Hargrove, Botvinick, Poole
Department Heads
Transcription Svcs – Taylor