



**PLANNING AND DEVELOPMENT DEPARTMENT  
CITY OF HIGH POINT**

**DEVELOPMENT ORDINANCE  
DETERMINATION**

NUMBER: 19-01

DATE: 8/19/19

**Ordinance Section(s) Affected:**

Section 1.8.5. *Prior-Approved Conditional Use Zoning*

Section 1.8.7. *Prior-Approved Planned Unit Development and Traditional Neighborhood District*

**Text of Section(s):**

**1.8.5.B. Amendment**

A conditional use zoning (and associated conditional use permit) approved before January 1, 2011 must be amended through an amendment to the Official Zoning Map in accordance with Section 2.4.20, Zoning Map Amendment.

**1.8.7.B. Amendment of Conditional Use Zoning**

Amendments to a PDR, PDM, or PDL district established through a conditional use zoning classification (and a conditional use permit) approved before January 1, 2011 shall be subject to the standards in Section 1.8.5, Prior-Approved Conditional Use Zoning.

**Issue:**

A request was submitted for the Planning & Development Director to authorize and find in compliance the construction of a single-family detached dwelling on the combined property of two lots identified as 1645 and 1647 Linton Court. The request was stated in a letter dated July 26, 2019 and submitted by Thomas E. Terrell, Jr., an attorney representing the property owners, Harry R. Culp & Catharine W. Culp. The two lots were acquired by the Culpes on June 11, 2019 and a subsequent instrument of combination that combined the two lots into one lot was also recorded on June 11, 2019.

The zoning approvals for the property in question (i.e. zoning map amendment, conditional use permit, and unified development plan) allow twin homes on the property. The letter states that the Planning & Development Director could “approve an Administrative Amendment to the County Club Villas Master Plan and Conditional Zoning Permit to allow construction of single-family homes as an option on one or more lots in Tract A...”. And, the letter further states the Director can “exercise statutory and Development Ordinance powers to interpret the map amendment ordinance as allowing for RM-5 uses other than twin homes”.

The property is within The Villas at County Club Estates residential development that was approved by the City Council on February 19, 2004 through the zoning map amendment (i.e. rezoning) process as a Conditional Use Planned Unit Development – Residential (CU PDR) District. The City Council approved an associated conditional use permit and unified development plan for the Planned Unit Development (PUD) district that divided the development into three tracts for the purposes of administering land use and development conditions.

Because the development is within two counties, the unified development plan was recorded in the Register of Deeds Office of both Davidson County (PB43, PG82) and Guilford County (PB158, PG1). The approved unified development plan shows the property in question is within Tract A of the development, and the plan shows Tract A developed with twin homes.

When the PUD district was approved in 2004, the Development Ordinance generally defined a twin home as one building containing two dwelling units each on its own lot that are connected along a common party wall. A single family detached dwelling was generally defined as a separate, detached building that contains one dwelling unit.

The conditional use permit states in Section I. A. for Tract A that “only twin homes” as allowed in the Residential-Multifamily – (RM-5) District and their customary accessory uses shall be permitted. Tract B allows “Any of the land uses allowed in the Residential Single-Family (RS-12) District”, which includes single-family detached dwellings. And Tract C was approved for use only as open space & common area. The property owners (Donald Douglass & Anne Douglass and The Generation Group, LLC) signed the permit on June 17, 2004 agreeing to bind the property to the uses and conditions in the approved permit unless amended in accordance with the Development Ordinance.

#### **Determination:**

It is determined that because Section I. A. of the approved conditional use permit specifically states that “only twin homes” are allowed in Tract A, then it precludes any administrative authorization for any other land use within Tract A. That level of discretion is not authorized in the Development Ordinance or statutes for an administrator to override a City Council condition of approval. Therefore, any change in uses for Tract A, which includes allowing the construction of a single-family detached dwelling, requires approval by the City Council as a zoning map amendment (i.e. rezoning).

The basis for this determination is as follows:

When the CU PDR District was approved in 2004, it was subject to the 1992 version of the Development Ordinance as amended to that date. In that Development Ordinance, Section 9-4-3(a) Planned Unit District Requirements, required the rezoning of a property to a PUD district to follow the Conditional Use District process in Section 9-3-13.

Section 9-3-13 Conditional Use Districts & Conditional Use Permits, required property owners seeking a PUD District approval to obtain a zoning map amendment (i.e. rezoning) and simultaneously obtain a conditional use permit. Both types of zoning approvals could be granted only by the City Council after a quasi-judicial hearing and a recommendation from the Planning & Zoning (P&Z) Commission.

In addition, Section 9-4-3 required PUD districts to have a unified development plan that was reviewed and recommended by the P&Z Commission, approved by the City Council, and recorded in the county Register of Deeds Office. Amendments to a unified development plan were processed similarly as to the original approved plan, with P&Z Commission recommendation, City Council approval, and plan recordation.

Once a Conditional Use District or a PUD district was approved, the district could be amended as either a major amendment or minor amendment. Section 9-3-13 (b)(10) stated that major amendments altered the objective and purpose of the district and therefore required approval by following the same procedure that established the district (i.e. rezoning). That section further stated that major amendments specifically included: “boundary changes, use changes (emphasis added), increased density, and increased intensity of development” as examples to define a major amendment. In Section 9-3-13 (b)(9), City Council could grant minor amendments after a report from staff without a hearing and recommendation from the Planning & Zoning Commission. Minor amendments were those that did not constitute major amendments. Therefore, any use change constituted a major amendment and required approval by the City Council in accordance with the same procedure that established the district.

That 1992 version of the Development Ordinance did not contain any provision that allowed an administrator to amend a City Council approved Conditional Use District or a PUD district.

In 2010 by an amendment to the Development Ordinance, the City Council eliminated the “Conditional Use” quasi-judicial zoning process, which established the PUD district and conditional use permit in question. It was replaced on January 1, 2011 by the “Conditional Zoning” legislative zoning process, where use restrictions and conditions are contained in the adopting zoning map amendment ordinance. In Section 12 of that amending ordinance establishing the new process, the City Council allowed zoning districts that were established through the conditional use process to remain in effect and continue to be governed by those approved conditional use permits. However, any change constituting a major amendment required a rezoning to a new zoning district since conditional use districts were no longer available. The amending ordinance allowed for minor amendments to continue to be processed up to January 1, 2014. After that date, any change to a Conditional Use district, including a PUD district, required approval by City Council of a new zoning district for the property (i.e. rezoning).

On January 1, 2017, a comprehensively revised Development Ordinance went into effect. It carried forward the same provisions governing zoning districts that were previously approved by City Council in 2010. Section 1.8.7.B. states that amendments to a PUD district approved before January 1, 2011 are subject to the process for prior-approved conditional use zoning in Section 1.8.5. Section 1.8.5 clearly states that a conditional use zoning district and the associated conditional use permit approved before January 1, 2011 must be amended through the zoning map amendment process (i.e. rezoning).

Lastly, the requesting letter points to two lines of text in the “Conditions” section of the approved conditional use permit: The first line states “If the tract is developed as a twin home development...”. And the second line of text in a separate section states “In Tract A, multifamily structures shall be limited to a maximum of four (4) dwelling units per building”. The requesting letter says that these lines constitute conflicting text in the approved permit, and the conflict should be resolved in the favor of the property owner by allowing other RM-5 uses.

One of the initial drafts for the conditional use permit that the staff prepared for the developer’s review is in zoning case file 03-20. In that initial draft, Tract A was not restricted to only twin homes but allowed all RM-5 uses. In addition, Tract C was allowed all RM-5 uses. Given that the initial version of the conditional use permit was drafted to allow for all RM-5 uses (which includes single-family detached dwellings, twin homes, multifamily dwellings among other uses), then the lines of text that state “If the tract is developed as a twin home development...” and that limits multifamily structures to four units per building is clear. However, that initial version of the requested permit did

not go to hearing before the P&Z Commission and the version that was considered by the P&Z Commission had the language restricting the allowable uses to “only twin homes” in Tract A. Subsequently to obtain City Council approval of the permit, the applicant changed the uses in Tract C from all RM-5 uses to only open space and common area use or land to be held by the developer for future development, which would require an amendment to the permit.

By reading the materials in the zoning case file in chronological order, it clearly illustrates that the subject lines of text in the “Conditions” section of the permit are typographical errors that should have been changed when the allowable uses in the “Uses” section of the permit were changed. The staff also found a typographical error in the “Uses” section of the conditional use permit in Section I.A. for Tract A where it states in the second line “...shall be shall be permitted...”. These typographical errors do not result in confusion when reading the list of allowed uses in Section I Uses of the approved permit, nor do they or have they caused conflict or confusion in the administrative review of the permit for construction approvals of those allowed uses within the development.

Approved: G. Lee Burnette, AICP  
*Planning & Development Director*