Process and Use Text Amendment Discussion

At the direction of Mayor Blakely, staff has been asked to evaluate potential amendments to the Land Development Code regarding the approval processes required for various land uses. The table below includes the uses currently identified in the Land Development Code and the type of approval required for each use within the applicable zoning district.

Before preparing a formal text amendment, staff would like to have an open discussion with Town Council regarding the intent of these potential changes. The purpose of this discussion is to ensure that any proposed amendments reflect Council's vision for how different types of development applications should be reviewed and approved.

Please do not feel the need to go through each land use individually or feel that you have to provide feedback on every specific use. The feedback can be more wide ranging, such as "we want multifamily projects to go through this process" or "we want utility projects to go through this process," and so on. If Council is interested in providing feedback on specific land uses, I would be more than happy to go through it that way as well.

I mainly want to make sure I understand Council's preference before I start working on the amendment so that I can bring forward something that reflects Council's goals and vision.

The Land Development Code currently identifies uses through the following approval categories:

> P: Permitted Use. The use is reviewed administratively by staff and does not require additional use specific approval standards.
>
> PS: Permitted Subject to Additional Standards. The use is generally reviewed administratively by staff but must comply with the applicable additional standards contained in Chapter 3.
>
> SUP: Special Use Permit. The proposed use requires approval through the Special Use Permit process established in Chapters 3 and 15. This is a quasi judicial process that currently includes review by the Planning Board and Town Council. Approval is specific to the proposed use and site plan.
>
> CZ: Conditional Zoning. Conditional zoning is a legislative zoning process reviewed and approved by Town Council. Currently, the use table identifies conditional zoning only applies for the Shopping Center, Community Center use. Approval is specific to the proposed site plan and the use or uses approved by Town Council. Uses or development outside the scope of the approved conditional zoning are not permitted.

—: Not Permitted. The use is not permitted within the applicable zoning district.

Potential Changes for Discussion

Staff understands that Council may prefer to convert a number of uses currently requiring Special Use Permits to a Conditional Zoning process. Doing so would shift those applications from a quasi judicial decision making process to a legislative zoning process, which provides Council with greater discretion to consider broader land use and policy considerations.

Simply converting all SUP uses to conditional zoning would be a relatively straightforward text amendment. However, staff recommends discussing the intended approach before preparing an amendment because the two processes serve different purposes. Certain uses may remain appropriate for the SUP process, while others may be better suited to conditional zoning.

Special Use Permits

A Special Use Permit is generally appropriate when the Land Development Code has already determined that a particular use may be appropriate within a zoning district, provided that the proposal satisfies established standards.

The SUP process is quasi judicial. The reviewing board applies the standards contained in the Land Development Code to the evidence presented for a particular application. Fletcher's current ordinance contains nine criteria that must be considered when reviewing an SUP.

Generally, when an applicant demonstrates through competent, material, and substantial evidence that the applicable standards have been satisfied, the applicant is entitled to approval. The decision cannot be based solely on whether Council, staff, or neighboring property owners support or oppose the proposed project.

The fundamental question presented by an SUP is:

"The zoning ordinance already says this use is potentially appropriate here. Does this particular proposal satisfy the standards we adopted for allowing it?"

For this reason, an SUP should not function as a miniature rezoning hearing. Its purpose is to determine whether a particular proposal satisfies the standards already established by the Town.

Conditional Zoning

Conditional zoning serves a different purpose. Conditional zoning is a legislative process involving a rezoning of specific property based upon a particular development proposal and site plan. Conditions may be incorporated into the approval consistent with North Carolina law.

Unlike an SUP, conditional zoning provides Town Council with broader legislative discretion. Council must consider the consistency of the proposed rezoning with the Town's Land Use Plan and determine whether the rezoning is "reasonable and in the public interest".

The fundamental question presented by conditional zoning is:

"Does the existing zoning provide the appropriate regulatory framework for this property, or is Council willing to approve different zoning based upon this specific development proposal?"

Because conditional zoning is legislative, Council may consider broader planning and policy issues, including compatibility with surrounding development, proposed density and intensity, transportation impacts, adopted land use policies, site design, and whether the proposed conditions adequately address potential impacts.

This distinction can become particularly important when there is significant public opposition to a project. In an SUP proceeding, general opposition to a development does not, by itself, provide a lawful basis for denial. The decision must be based upon competent, material, and substantial evidence related to the applicable ordinance standards.

In a conditional zoning case, Council has considerably more discretion to consider broader land use and policy questions, including whether the proposed development is appropriate for the location and whether the requested zoning is consistent with the Town's long term vision for the area.

When Each Process May Be Appropriate

Conditional zoning may be particularly useful when the primary question is whether the zoning of a property should change and the Town wants certainty regarding the development that will result from that change. Examples could include major multifamily developments, mixed use projects, large commercial developments adjacent to residential areas, planned developments, significant redevelopment projects, or situations where a conventional rezoning would provide broader development rights than either the applicant or Town intends.

Conversely, conditional zoning may not be necessary for every potentially impactful land use. If the Town is comfortable establishing clear ordinance standards and allowing a particular use within an existing zoning district when those standards are satisfied, the SUP process can provide a more predictable approval process.

A simple way to distinguish the two processes is:

SUP: "This use belongs in this zoning district under the right circumstances. Does this proposal meet those circumstances?"

Conditional Zoning: "We may be willing to change the zoning of this property, but we want to know specifically what development will result from that change."

Discussion and Next Steps

Staff is seeking direction from Town Council regarding which uses should remain subject to the Special Use Permit process and which uses would be more appropriately reviewed through conditional zoning or be permitted by right.

Of particular importance is whether Council wants certain uses to remain permitted within existing zoning districts subject to objective approval standards, or whether Council believes those uses warrant a legislative review that provides greater discretion to evaluate the appropriateness of the development and its relationship to the surrounding area.

Following Council's discussion and direction, staff proposes to prepare potential revisions to the use table and informally present those revisions to the Planning Board for discussion. Feedback from both bodies could then be incorporated into a formal Land Development Code text amendment for consideration through the required amendment process.

BASE DISTRICT	R-1	R-1A	R-2	R-3	NBD	CBD	C-1	C-2	M-1
Residential									
Dwelling-Single Family (Not part of a PRD)	P	P	P	P	P	P	—	—	—
Dwelling-Duplex (Not part of a PRD)	P	P	P	P	P	P	—	—	—
Dwelling-Multifamily 4 units/bldg or less (Not part of a PRD)	—	—	—	P	P	P	—	—	—
Dwelling-Multifamily more than 4 units/bldg	—	—	—	SUP	SUP	SUP	—	—	—
Dwelling-Secondary	PS	PS	PS	PS	PS	PS	PS	PS	—
Family Care Home (6 or fewer residents)	PS	PS	PS	PS	PS	PS	PS	PS	—
Home Occupation	PS	PS	PS	PS	PS	PS	PS	PS	—
Housing Service for the Elderly	—	—	—		P	P	P	P	—
Live-Work Units	—	—	—		PS	PS	PS	PS	—
Manufactured Housing, Individual Lots	—	PS	PS	PS	—	—	—	—	—
Manufactured Housing, Parks	—	—	—	SUP	—	—	—	—	—
Planned Residential Development (PRD)	SUP	SUP	SUP	SUP	SUP	SUP	—	—	----
Lodging									
Bed and Breakfast Inns	PS	PS	PS	PS	PS	P	P	—	—
Hotels/Motels/Inns	—	—	—	—	—	P	P	P	P
Rooming or Boarding House	—	—	SUP	PS	PS	—	—	—	—
Office/Service									
Animal Services	—	—	—	—		P	P	P	P

BASE DISTRICT	R-1	R-1A	R-2	R-3	NBD	CBD	C-1	C-2	M-1
ATM	—	—	—	—	P	P	P	P	P
Banks, Credit Unions, Financial Services	—	—	—	—	P	P	P	P	P
Business Support Services	—	—	—	—	P	P	P	P	P
Child/Adult Day Care Home (6 –15 persons)	P	P	P	P	P	P	P	P	P
Child/Adult Day Care Center (16 or more persons)	PS	PS	PS	PS	PS	PS	PS	PS	PS
Community Service Organization	—	—	P	P	P	P	P	P	—
Drive Thru Service	—	—	—	—	—	PS	P	P	—
Funeral Homes	—	—	—	—	—	—	P	P	P
Group Care Facility (More than 6 residents)	—	—	SUP	SUP	SUP	SUP	SUP	—	—
Government Services	—	—	—	—	P	P	P	P	—
Medical Services - Clinic, Urgent Care Center	—	—	—	—	—	P	P	P	—
Medical Services – Doctor office	—	—	—	—	P	P	P	P	—
Outdoor Kennels	—	—	—	—	—	—	—	PS	PS
Post Office	—	—	—	—	P	P	P	—	—
Professional Services	—	—	—	—	P	P	P	P	P
Studio – Art, dance, martial arts, music	—	—	—	—	P	P	P	P	P
Vehicle Services – Major Repair/Body Work	—	—	—	—	—	—	—	PS	PS
Vehicle Services – Minor Maintenance/Repair	—	—	—	—	—	—	PS	PS	PS
Retail/Restaurants									
Auto Parts Sales	—	—	—	—	—	—	P	P	P
Bar/Tavern/Night Club	—	—	—	—	—	P	P	P	—
Drive-Thru Retail/Restaurants	—	—	—	—	—	PS	P	P	P
Gas Station with Convenience Store	—	—	—	—	PS	—	P	P	P
General Retail – 10,000 sf or less	—	—	—	—	P	P	P	P	P
General Retail – 10,001 sf – 50,000 sf	—	—	—	—	—	P	P	P	P
General Retail – 50,001 – 100,000 sf	—	—	—	—	—	SUP	SUP	SUP	SUP
Restaurant	—	—	—	—	P	P	P	P	P
Shopping Center – Neighborhood Center	—	—	—	—	—	SUP	PS	PS	PS
Shopping Center – Community Center	—	—	—	—	—	CZ	CZ	CZ	CZ
Vehicle/Heavy Equipment Sales, Service, & Rental	—	—	—	—	—	—	----	PS	PS

BASE DISTRICT	R-1	R-1A	R-2	R-3	NBD	CBD	C-1	C-2	M-1
Entertainment/Recreation									
Adult Establishment	—	—	—	—	—	—	—	SUP	—
Amusements, Indoor	—	—	—	—		P	P	P	—
Amusements, Outdoor	—	—	—	—	—	—	P	P	—
Cultural or Community Facility	SUP	SUP	SUP	SUP	P	P	P	P	—
Electronic Gaming Operations/Internet Sweepstakes	—	—	—	—	—	—	—	—	—
Meeting Facilities	SUP	SUP	SUP	SUP	P	P	P	P	—
Recreation Facilities, Indoor	—	—	—	SUP	P	P	P	P	—
Recreation Facilities, Outdoor	P	P	P	P	P	P	P	P	—
Shooting Range, Outdoor	—	—	—	—	—	—	—	—	SUP
Theater, Movie	—	—	—	—	—	P	P	P	—
Theater, Live Performance	—	—	—	—	—	P	P	P	—
Manufacturing/Wholesale/Storage									
Agribusiness	P	P	P	P	—	—	—	—	P
Agricultural Products	PS	PS	PS	PS	—	—	PS	PS	P
Asphalt Plant	—	—	—	—	—	—	—	—	—
Construction Services	—	—	—	—	—	—	—	PS	P
Cryptocurrency Mining Operations	—	—	—	—	—	—	—	—	—
Data Centers	—	—	—	—	—	—	—	—	—
Laboratory - Medical, analytical, research & development	—	—	—	—	—	SUP	SUP	SUP	P
Laundry, dry cleaning plant	—	—	—	—	—	—	P	P	P
Manufacturing, Light	—	—	—	—	—	—	P	P	P
Manufacturing, Neighborhood	—	—	—	—		P	P	P	P
Manufacturing, Heavy	—	—	—	—	—	—	—	—	P
Media production	—	—	—	—	P	P	P	P	—
Metal products fabrication, machine or welding shop	—	—	—	—	—	—	—	—	P
Mini-Warehouses	—	—	—	—	—	—	—		P
Research and development	—	—	—	—	P	P	P	P	P
Storage - Outdoor storage yard, primary use	—	—	—	—	—	—	—	—	PS
Storage - Warehouse, indoor storage	—	—	—	—	—	—	—	—	P

BASE DISTRICT	R-1	R-1A	R-2	R-3	NBD	CBD	C-1	C-2	M-1
Wholesaling and distribution	—	—	—	—	—	—	—	SUP	PS
Civic/Institutional									
Campground	—	—	SUP	SUP	SUP	—	—	—	—
Cemeteries	P	P	P	P	P	—	P	P	—
Colleges/Universities	—	—	—	—	SUP	SUP	SUP	P	—
Hospital	—	—	—	—	—	SUP	P	P	—
Public Safety Station	SUP	SUP	SUP	SUP	P	P	P	P	P
Religious Institutions	SUP	SUP	SUP	SUP	SUP	SUP	SUP	P	—
Schools – Elementary & Secondary	SUP	SUP	SUP	SUP	SUP	SUP	SUP	P	—
Schools – Vocational/Technical	—	—	—	—	SUP	SUP	SUP	P	—
Infrastructure									
Airport	—	—	—	—	—	—	—	—	SUP
Wireless Telecommunication Facility-Stealth	PS	PS	PS	PS	PS	PS	PS	PS	PS
Wireless Telecommunication Facility-Tower	—	—	—	—	—	—	—	—	SUP
Utilities-Class 1	P	P	P	P	P	P	P	P	P
Utilities-Class 2	—	—	—	—	—	—	—	SUP	PS
Utilities-Class 3	—	—	—	—	—	—	—	—	PS
Utilities-Class 4	—	—	—	SUP	—	—	—	PS	PS

Other considerations

Outside of determining which uses should be Special Uses versus Conditional Rezonings, it is also worth discussing whether our current Special Use Permit process makes sense and is still serving its intended function for the Town.

The Land Development Code currently contains conflicting information regarding which board is responsible for deciding Special Use Permits. Some sections state that Special Use Permits are decided by Town Council, while other sections state that they are decided by the Zoning Board of Adjustment. The administration section of the ordinance states that Special Use Permits go before Town Council, which I believe is why that has historically been the Town's practice despite the conflicting language elsewhere in the ordinance.

If Town Council would prefer to remove itself from the administrative review of Special Use Permits altogether, shifting responsibility for their review to the Zoning Board of Adjustment would be a relatively straightforward option. Many municipalities across the state use this approach because it allows quasi-judicial decisions to be handled by a single board that regularly considers these types of cases. It also removes Town Council, as the Town's primary policy-making body, from administrative decisions where the decision must be based on whether an applicant has satisfied the applicable ordinance standards.

Even if Council decides to retain its role in reviewing and deciding Special Use Permits, I would strongly suggest discussing the current practice of having the Planning Board review these applications before they proceed to Town Council. I believe the additional Planning Board review creates potential procedural complications without necessarily providing a corresponding benefit to the decision-making process.

The UNC School of Government has addressed the use of advisory boards to make recommendations in quasi-judicial proceedings and some of the procedural concerns associated with this practice. That discussion can be found here.

The UNC School of Government states:

“An advisory review is allowed, but if done it is primarily for the benefit of the parties. It recognizes that these reviews are indeed like a dress rehearsal for the formal evidentiary hearing, terming this a "preliminary forum." It avoids the due process and evidentiary concerns by providing that the decision-making board cannot use the information presented at the advisory review. Further, the planning board's recommendation cannot be the basis for a decision on the application.

Given these limits, some jurisdictions have simply eliminated advisory reviews altogether. If a planning board comment has such limited use, why put everyone to the time, trouble, and expense to go through the planning board prior to going to the decision-making board? In these jurisdictions the responsibility to hold an evidentiary hearing and make a decision on a special use permit is assigned to a single board and there are no advisory reviews. This is quicker and simpler for applicants and neighbors concerned about the application.”

The Heart of Fletcher Zoning Overlay includes language that does not appear to align with the overall structure and intent of the Land Development Code also. The use table establishes each land use and identifies whether that use is permitted within the corresponding zoning district.

The Heart of Fletcher Overlay currently states:

“The guidelines contained in the Heart of Fletcher Overlay (HOF-O) should be used as a reference tool to promote urban, pedestrian-friendly developments within the town’s center. Developers shall comply with the following guidelines and will adhere to review procedures by the Administrator, the Planning Board and/or the Town Council as stipulated in Article 15 of this Code. A Conditional Zoning review shall be required where a developer proposes a use not permitted in the underlying zoning district.”

Staff would like to consider removing the final sentence, which states:

This provision potentially undermines the use table by creating a separate pathway for properties within the Heart of Fletcher Overlay to request uses that are otherwise not permitted within the underlying zoning district. In effect, a property within the overlay could seek approval for a use that would not be available to another property located within the same underlying zoning district but outside of the overlay.

The current language also does not establish clear limitations on the types of uses that may be requested through this process. For example, a heavy manufacturing use is not permitted within the C-1 zoning district and is only allowed in M-1. However, under the existing language, an applicant with property located within both the C-1 District and the Heart of Fletcher Overlay could potentially submit a Conditional Zoning application requesting that use.

While Town Council may ultimately determine that such a request is inappropriate and deny the application, the Town would still be required to process the application through the normal Conditional Zoning process and satisfy all applicable statutory requirements.

Removing this sentence would ensure that permitted and prohibited uses within the Heart of Fletcher Overlay continue to be determined by the use table and the applicable review process. It would also provide greater clarity and consistency by requiring each proposed use to follow the specific review and approval process established by the Land Development Code, rather than providing a blanket Conditional Zoning pathway for uses that are otherwise not permitted within the underlying zoning district.