

PENDING AMENDMENT

P08-43

Falcon Zoning Ordinance

Enacting and Creating Provisions for Conditional Use Districts and Permits

CASE HEADING:

REVISION AND AMENDMENT TO THE TOWN OF FALCON ZONING ORDINANCE ESTABLISHING AND ENACTING PROVISIONS FOR CONDITIONAL USE DISTRICTS AND PERMITS AMENDING ARTICLE II, GENERAL ZONING DISTRICT CLASSIFICATIONS, SECTION 2.1. STATEMENT OF INTENT, PURPOSE AND ZONE CHARACTERISTIC, CREATING SUB-SECTION 2.18, CONDITIONAL USE DISTRICTS; AMENDING ARTICLE III. PERMITTED PRINCIPAL USES AND STRUCTURES, SECTION 3.1 TABULATION OF PERMITTED USES; AMENDING THE ENTIRE ORDINANCE BY REPLACING THE TERMS "SPECIFIED CONDITIONAL USE(S)" WITH "SPECIAL USE(S); AMENDING ARTICLE IV. OVERLAY DISTRICTS IN ITS ENTIRETY ESTABLISHING PROVISIONS FOR COMPANION DISTRICTS-CONDITIONAL USE DISTRICTS; AMENDING ARTICLE X. DEFINITION OF TERMS, SECTION 10.2. DEFINITIONS OF SPECIFIC TERMS AND WORDS, INSERTING IN ALPHABETICAL ORDER AND AMENDING SPECIFIC TERMS RELATED TO THE CONDITIONAL USE DISTRICT PROVISIONS; ARTICLE XII. ADMINISTRATIVE PROVISIONS, SUB-SECTION (B), SECTION 12.5. AMENDMENTS, SUB-SECTION 12.51. SUBMISSIONS TO AND CONSIDERATION THEREOF BY THE PLANNING BOARD AND SUB-SECTION (C) OF 12.53. APPROVAL BY THE TOWN COUNCIL; UPDATING THE TABLE OF CONTENTS AS APPROPRIATE AND MODIFYING THE TOWN'S ADOPTED FEE SCHEDULE.

PURPOSE:

This amendment is being proposed to give the Falcon Board of Commissioners an additional tool for consideration of rezoning cases. Only those uses specifically requested in the rezoning application are allowed and no use is permitted by right in the Conditional Use District. If approved, a Conditional Use District, by means of conditions placed on the Permit, enables the Town Board to ensure the citizens of the Town that development will occur as promised by the rezoning applicant.

CURRENT MEETING INFORMATION:

Joint Planning Board hearing on August 19, 2008, at 6:55 pm, in Room 118, Board of Commissioners Hearing Room (Main Courthouse) at 117 Dick Street, Fayetteville.

ADDITIONAL INFORMATION:

A complete copy of the proposed amendment is attached.

P08-43

REVISION AND AMENDMENT TO THE TOWN OF FALCON ZONING ORDINANCE ESTABLISHING AND ENACTING PROVISIONS FOR CONDITIONAL USE DISTRICTS AND PERMITS AMENDING ARTICLE II, GENERAL ZONING DISTRICT CLASSIFICATIONS, SECTION 2.1. STATEMENT OF INTENT, PURPOSE AND ZONE CHARACTERISTIC, CREATING SUB-SECTION 2.18, CONDITIONAL USE DISTRICTS; AMENDING ARTICLE III. PERMITTED PRINCIPAL USES AND STRUCTURES, SECTION 3.1 TABULATION OF PERMITTED USES; AMENDING THE ENTIRE ORDINANCE BY REPLACING THE TERMS "SPECIFIED CONDITIONAL USE(S)" WITH "SPECIAL USE(S); AMENDING ARTICLE IV. OVERLAY DISTRICTS IN ITS ENTIRETY ESTABLISHING PROVISIONS FOR COMPANION DISTRICTS-CONDITIONAL USE DISTRICTS; AMENDING ARTICLE X. DEFINITION OF TERMS, SECTION 10.2. DEFINITIONS OF SPECIFIC TERMS AND WORDS, INSERTING IN ALPHABETICAL ORDER AND AMENDING SPECIFIC TERMS RELATED TO THE CONDITIONAL USE DISTRICT PROVISIONS; ARTICLE XII. ADMINISTRATIVE PROVISIONS, SUB-SECTION (B), SECTION 12.5. AMENDMENTS, SUB-SECTION 12.51. SUBMISSIONS TO AND CONSIDERATION THEREOF BY THE PLANNING BOARD AND SUB-SECTION (C) OF 12.53. APPROVAL BY THE TOWN COUNCIL; UPDATING THE TABLE OF CONTENTS AS APPROPRIATE AND MODIFYING THE TOWN'S ADOPTED FEE SCHEDULE.

AMEND Article II. General Zoning District Classifications, Section 2.1. Statement of Intent, Purpose and Zone Characteristic, by CREATING sub-section 2.18, entitled: Conditional Use Districts, as follows:

2.18 Conditional Use Districts

2.181. **Companion Districts.** Each district includes a companion Conditional Use District (e.g. R15 has R15/CUD) where no uses are permitted by right. All uses in the companion Conditional Use Districts also require a Conditional Use Permit.

2.182 Reserved for future use.

2.183 Reserved for future use.

AMEND Article III. Permitted Principal Uses and Structures, Section 3.1 Tabulation of Permitted Uses, as follows:

Within the various use districts, as established in Article II and subject to the requirements of this ordinance, no land, building or structure shall be used, and no building or structure shall be erected which is intended or designed to be used, in whole or in part for any use other than the uses permitted by the various districts as established herein. The use regulations for the various districts are intended to be permissive in nature and none other than those specifically listed shall be construed as being allowable uses. ~~Permitted uses in the various districts are indicated in the appropriate column of the following tables. Specified~~

~~conditional uses allowed in certain districts, after approval of the Board of Adjustment, are indicated in the following tables. "Some land uses, which in general may be compatible with other uses permitted in general zoning districts, may~~ be allowed through conditional use district and approval of a permit or by issuance of a special use permit only upon findings that ~~circumstantially have an adverse impact under~~ certain conditions exist or should be applied, and is requested and agreed to by the property owner. The ~~Their~~ establishment of these uses shall be allowed only after review through appropriate measures and approval of plans ~~and they shall be called specified conditional uses."~~

Permitted uses in the various districts are indicated under the appropriate heading of the following tables. Special uses, with Board of Adjustment approval and issuance of the permit, and some conditional use districts, after Board of Commissioner approval and issuance of the permit, are also indicated in the tables. All proposed uses in any planned district require site plan review and approval and shall be in compliance with the standards of this ordinance and the Town's Subdivision Ordinance.

AMEND the entire remainder of the Falcon Zoning Ordinance by REPLACING the terms "specified conditional use" and "specified conditional uses" with "special use" and "special uses" as appropriate; also REPLACING all the specified conditional use identifiers (C) in the tables contained within Article III. Permitted Principal Uses and Structures, with the identifier (S).

AMEND Article IV. Overlay Districts its entirety, as follows:

ARTICLE IV. COMPANION DISTRICTS – CONDITIONAL USE ~~OVERLAY~~ DISTRICTS

SECTION 4.1. GENERAL

The conditional use zoning districts set forth herein are authorized by N.C. GEN. STAT. §160A-382, and are intended to modify the use to which the parallel zoning district is restricted. Generally, an applicant, by seeking to rezone property to a Conditional Use District, will propose to restrict or eliminate Permitted, Conditional or Special Uses. Request for Conditional Use District rezoning shall be processed administratively in the same manner as for amendments to this Ordinance as established in Article 12.5.

Conditional Use Districts are floating districts that parallel general zoning districts. Conditional Use Districts are identical to their corresponding general zoning districts in all respects except that a Conditional Use Permit is required as a prerequisite to any use (Permitted, Conditional or Special) or development within them.

Parallel Conditional Use Districts are provided as a voluntary alternative method of petitioning the Board of Commissioners for a zoning map or classification change. The owner may submit conditions that restrict the uses that would otherwise be allowed in the zoning

district and only those uses specifically requested in the application shall be considered.

SECTION 4.2. RESTRICTIONS ON FILING OF APPLICATIONS

A request for a Conditional Use District rezoning shall be initiated only by an application [petition] signed by all current record owners of the property.

SECTION 4.3 CONTENT OF APPLICATIONS AND CONDITIONS

A properly submitted application for a Conditional Use District incorporates a petition for rezoning and an application for a Conditional Use Permit, which may be combined in one application. The Conditional Use District application shall provide the minimum information requirements set forth below, however, additional information may be required by the Planning and Inspections Staff, Planning Board or the Board of Commissioners when requested if any of the aforementioned deem it necessary in order to be able to make a recommendation on, or decision regarding, a required finding. Such requests may include a requirement for a more detailed site plan, or one modified in accordance with additional or modified conditions and other performance criteria.

- (a) Proposed Uses: Proposed uses shall be set forth in detail, including the compatibility with the uses in the neighboring districts. Any limitations or conditions to be placed on the proposed uses to enhance compatibility with and benefit to surrounding areas shall also be set forth.
- (b) Dimensional Requirements: The application shall show that the uses comply with dimensional requirements for the district requested. If the applicant proposes to vary the dimensional requirements for the district requested, it shall be demonstrated that the public purposes to be accomplished by any such dimensional requirement are met to an equal or greater degree.
- (c) Sign Requirements: The application shall indicate the location of signs in accordance with Article IX, Sign Regulations. If the applicant proposes to vary the sign provisions for the district requested, it shall be demonstrated that the public purposes to be accomplished by any such provisions are met to an equal or greater degree.
- (d) Off-Street Parking Requirements: The application shall indicate the location of all off-street parking and internal drive areas in accordance with Article VIII, Off-Street Parking and Loading, provisions. If the applicant proposes to vary the off-street parking provisions of this ordinance for the use requested, it shall be demonstrated that the public purposes to be accomplished by any such provisions are met to an equal or greater degree.
- (e) Miscellaneous Provisions: The application for a Conditional Use Permit may also set forth other conditions and performance criteria, such as days and hours of operation, numbers of employees, exterior lighting, and noise, odor and smoke emission

controls or other environmental conditions, which might be proposed to make the use of the property compatible with surrounding areas and uses allowed therein.

- (f) Site Plan Requirement: The application shall include a site plan drawn to the specifications of Section 12.45. If the proposed uses involve development subject to the Town's Subdivision Ordinance, the site plan required may be general in nature, showing a generalized street pattern, if applicable, and the location of proposed uses. If the proposed uses include development not subject to the Town's Subdivision Ordinance, the site plan shall be of sufficient detail to allow the Planning and Inspections Staff, the Planning Board, and the Board of Commissioners to analyze the proposed uses and arrangement of uses on the site. It shall also include the footprints of all buildings to be placed on the site, the proposed number of stories, and the location and number of off-street parking and loading spaces. The site plan shall show proposed points of access to existing streets and internal circulation patterns. In addition, the location of all proposed buffers and fences shall be included on the site plan.

SECTION 4.4. ACTION BY THE JOINT PLANNING BOARD

The Joint Planning Board may hold a public hearing during which the applicant may voluntarily make modifications to the Conditional Use Permit request. The hearing shall follow quasi-judicial requirements including sworn testimony, the reliance on competent evidence, avoiding ex parte contact and bias, and basing findings of fact on evidence in the record. Board members shall disclose on the record at the public hearing any site visit they may have made to the affected property or any incidental ex parte contact he/she may have had with an affected party. The Planning Board shall review the request for a Conditional Use Permit and Conditional Use District rezoning and make a recommendation to the Board of Commissioners. When favorably recommending approval of the Conditional Use District, the Planning Board shall issue a statement addressing the reasonableness of the proposed rezoning, in addition to addressing the request's consistency with the current Land Use Plan. In recommending the Conditional Use Permit, the Planning Board shall find that:

- (a) The use will not materially endanger the public health or safety if located according to the plan submitted and recommended;
- (b) The use meets all required conditions and specifications;
- (c) The use will maintain or enhance the value of adjoining or abutting properties, or that the use is a public necessity; and
- (d) The location and character of the use, if developed according to the plan as submitted and recommended, will be in harmony with the area in which it is to be located and in general conformity with the Town's most recent Land Use Plan and adopted planning policies.

SECTION 4.5. ACTION BY THE FALCON BOARD OF COMMISSIONERS

The Board of Commissioners shall hold a public hearing to consider the Conditional Use District rezoning and Conditional Use Permit. The hearing shall follow quasi-judicial requirements including sworn testimony, the reliance on competent evidence, avoiding ex parte contact and bias, and basing findings of fact on evidence in the record. Board members shall disclose on the record at the public hearing any site visit they may have made to the affected property or any incidental ex parte contact he/she may have had with an affected party.

The Board of Commissioners shall review the application, recommendations from the Joint Planning Board, suggested conditions, and other information presented at the public hearing. If the Board of Commissioners approves the rezoning application, a statement analyzing the reasonableness of the proposed rezoning along with addressing the consistency of the request with the current Land Use Plan shall be made a part of the record. Only upon approval of the Conditional Use District shall the Board of Commissioners consider approval of the Conditional Use Permit.

In approving the application, the Board of Commissioners, by separate motion, shall approve the Conditional Use Permit and may attach such reasonable requirements in addition to those specified in the Joint Planning Board's recommendation, and shall find that the application meets the findings listed in Section 4.4. Sub-sections (a) through (d). All conditions shall be stated in the permit and no condition shall be less restrictive than the standards of the parallel general use district. The conditions may include, but shall not be limited to:

- (a) The location of the proposed use on the property;
- (b) The number and location of structures;
- (c) The location and extent of accessory and support facilities, such as parking lots, driveways, fences and access streets;
- (d) The location and extent of buffer areas and other special purpose areas on the property;
- (e) The height of any structure;
- (f) The phasing of development;
- (g) Other restrictions on the use of the property that adhere to the purposes of this ordinance and maintain the public health, safety and welfare; and
- (h) Such other matters as the applicant shall propose.

The record shall reflect that the applicant voluntarily agrees to all conditions proposed for approval of the Conditional Use Permit.

SECTION 4.6. MODIFICATION TO APPROVED CONDITIONAL USE DISTRICTS & PERMITS

All modifications, including changes in use and/or increase in density, to approved Conditional Use Districts and Permits, other than those listed below, shall be reviewed in the same manner as a new project.

The following minor modifications to the Conditional Use Permit may be approved by the Planning and Inspections Staff without re-approval by the Board of Commissioners, provided no variance is required, the use does not change, the intent and layout of the approved plan is generally followed, density is not increased, conditions of approval are not violated, and such changes do not cause a significant adverse impact:

- (a) Slight variations in the building dimensions that do not depart from the general approved layout and not exceeding ten percent of the original approved dimensions;
- (b) Minor changes in parking lot or traffic lane dimensions;
- (c) Minor dimensional changes to individual lots;
- (d) Minor site modifications due to necessary engineering requirements;
- (e) Change of location of elements included on the site plan that generally maintains relative alignment and orientation to the approved site plan; and
- (f) Other similar insignificant changes.

In reviewing such changes, the Planning and Inspections Staff may require that the modification be handled in the same manner as a new application.

SECTION 4.7. TIME LIMIT

Once the Conditional Use District rezoning and Conditional Use Permit are approved, all conditions attached thereto shall be binding upon the property and all subsequent development and use of the property shall be in accordance with the approved permit and conditions. Since the intent of this type of district is to provide for workable alternative uses of property, it is intended that land will be zoned in accordance with firm plans to develop. Therefore, at the end of two years from the date of approval, the Board of Commissioners may examine progress made to determine if active efforts are proceeding. If the Board of Commissioners determines that active efforts to develop are not proceeding, the board may institute proceedings to rezone the property to its previous zoning classification.

SECTION 4.8. FAILURE TO COMPLY

If for any reason any condition imposed pursuant to this section is found to be illegal or invalid, or if the applicant should fail to accept any condition, the authorization of such Conditional Use Permit shall be null and void and of no effect, and the property shall remain in, or revert to, its previous zoning classification.

Compliance with all conditions of a Conditional Use Permit is an essential element of the Conditional Use Permit's continued validity and effectiveness. If the Planning and Inspections Director, hereinafter *Director*, determines that a developer has failed to comply with a condition of an approved Conditional Use Permit, the Director shall so notify the developer or the developer's successor in interest in writing and shall place the matter on the Board of Commissioners' agenda, after consideration by the Joint Planning Board and upon issuance of its recommendation, for the Board of Commissioners' hearing and decision whether or not to revoke the Conditional Use Permit. Such hearing shall be on reasonable written notice to the developer or the developer's successor in interest and shall be a quasi-judicial proceeding according to quasi-judicial procedures. The decision of the Board of Commissioners shall be a final decision, and a decision to revoke the Conditional Use Permit may be appealed to the Superior Court of Cumberland County within 30 days after the developer or the developer's successor in interest has been served with written notice of the Board of Commissioners' decision. Service by personal delivery or certified mail, return receipt requested, of a certified copy of the Board of Commissioners' approved minutes for its meeting at which such decision is made, shall constitute written notice and service of the Board of Commissioners' decision hereunder.

SECTION 4.9. VALIDATION OF EXISTING CONDITIONAL USE OVERLAYS

Nothing in this ordinance shall be interpreted to affect or impair any rights accrued pursuant to any Conditional Use Overlay District and Permit, under the Town Zoning Ordinance of March 5, 1991, and subsequent amendments, prior to the effective date of this amendment. All valid and legally approved Conditional Use Overlay Districts and Permits shall continue to be valid provided that terms of the permit are not substantially or materially altered or expanded in any manner, that all conditions and requirements of the permit are and continue to be complied with and that the use does not cease for a period of one year. Failure to comply with the conditions of the Permit for the Conditional Use Overlays will subject the developer and/or current owner to possible revocation pursuant to Section 4.8 above.

~~SECTION 4.1. GENERAL~~

~~The zoning districts set forth herein are authorized by N.C.G.S., Section 153A-382, and are intended to modify the restrictions of the underlying general zoning district. As appropriate, more than one overlay district may be used with any general zoning district. Any use permitted or allowed as a specified conditional use in the underlying general zoning district shall be permitted or allowed as a specified conditional use in the overlay district, unless disallowed by specific conditions or performance criteria imposed on the overlay district. The overlay district and the uses allowed therein also shall be subject to any conditions and performance criteria~~

~~imposed by this ordinance or otherwise by law in the underlying general zoning district, except as these may be modified by conditions and performance criteria imposed on the overlay district.~~

~~SECTION 4.2. CONDITIONAL USE OVERLAY DISTRICT (--/CU)~~

~~The purpose of the conditional use overlay district is to permit flexibility of land use regulation by allowing certain uses which are not permitted uses or specified conditional uses in the underlying general zoning districts, but which meet the locational criteria of or are otherwise compatible with the Land Use Policies Plan, the Comprehensive Land Use Plan, or any land use plan now or hereafter adopted by the Town Council and which do not adversely impact on the uses allowed in the underlying district. It is intended in particular, but not exclusively, that a conditional use overlay district be established to allow a use or uses which are a permitted or specified conditional use in a general zoning district other than the underlying district without changing the general zoning district classification and thereby allowing all the permitted and specified conditional uses in such other district, which under the circumstances of the case may not be warranted. This district is further intended to be established only where special review and specific conditions and other performance criteria controlling the proposed uses of the property are necessary to insure that the proposed use is reasonable, neither arbitrary nor unduly discriminatory, benefits the public and is otherwise compatible with land use plans and with uses allowed in the surrounding area. The district shall be referred to by a symbol consisting of the two or three letter code designation of the underling district followed by a slash mark and the letters CU; for example R15/CU. Conditional use overlay zoning districts shall be established in accordance with the procedures, standards and criteria set forth in the following subsections:~~

~~Section 4.21. Establishment of Conditional Use Zoning Districts~~

~~The establishment of a conditional use overlay district is an amendment of this ordinance. A conditional use overlay district may be proposed by petition from all the owners of property to be included in the district or by recommendation of the Planning Board or motion of the Town Council on their own respective initiatives. Such petitions, recommendations and motions shall be made and processed in accordance with Section 12.5, Amendments, as supplement by Section 4.23, below. Review by the Board of Adjustment and the conditional use permit required for specified conditional uses pursuant to Section 3.5 are not required for uses authorized in a conditional use overlay district.~~

~~Section 4.22. Petitions for Conditional Use Overlay Districts~~

~~A petition for conditional use overlay zoning shall provide the minimal informational requirements set forth below. Additional information may be required from the petitioner by the Planning Department, the Planning Board or the Town Council and shall be provided when requested. Such requests may include a requirement for a more detailed site plan or one modified in accordance with additional or modified conditions and other performance criteria.~~

~~(a) Proposed Uses: The petition shall set forth in detail and with specificity the uses~~

~~which are to be permitted in the proposed district. The standard for specificity shall be the terms for uses contained in the tables of permitted and specified conditional uses in Section 3.1 of this ordinance; more specific descriptive terms may be used. The proposed uses shall be justified in terms of their need, their benefit to the surrounding community and their compatibility with uses in the underlying and neighboring zoning districts. Any limitations or conditions to be place on the proposed uses to enhance compatibility with and benefit to surrounding areas shall also be set forth.~~

~~(b) Proposed Densities: If the proposed uses are residential in nature, the petition shall set forth the proposed density for such uses. This may be accomplished by reference to density allowances in general residential zoning districts or by proposing specific density requirements, appropriate to the contemplated use, other than standard allowances.~~

~~(c) Dimensional Requirements: The petition shall set forth dimensional requirements proposed for the uses requested in the petition. Off-street parking and loading facilities shall be included in this requirement. This may be done by reference to the dimensional provisions for specific general zoning districts as outlined in Section 7.3 or by proposing specific dimensional requirements, appropriate to the contemplated uses, other than standard allowances.~~

~~(d) Sign requirements: The petition shall set forth the sign regulations to be applied in the district by referencing applicable subsections of Section 9.4 or proposed variances there from, appropriate to the contemplated use.~~

~~(e) Miscellaneous Provisions: The petition may also set forth other conditions and performance criteria, such as days and hours of operation, numbers of employees, exterior lighting, and noise, odor and smoke emission controls, which might be appropriate to make the proposed uses of the property compatible with surrounding areas and uses allowed therein.~~

~~(f) Site Plan Requirements: The petition shall have attached a site plan, drawn to scale. If the proposed uses involve development subject to Cumberland County subdivision regulations, or any subsequent subdivision regulations adopted by the Town Council, the site plan required hereunder may be general in nature, showing a generalized street pattern, if applicable and the location of proposed uses. If the proposed uses involve development not subject to subdivision regulations, the site plan will be of sufficient detail to allow the Planning Department and Planning Board to analyze the proposed uses and arrangement of uses on the site and shall include an outline of all buildings to be placed on the site, the proposed number of stories, the location and number of off-street parking spaces, proposed points of access to existing streets and internal circulation patterns, and the location of all proposed buffers and fences.~~

~~(f) Signature Requirements: The petition shall be submitted in the name of and executed by all the owners of the property included in the proposed conditional use overlay district or their agents or attorneys in fact. The petition shall contain a statement that the owners understand and agree that upon review by the Planning Board and action by the Town Council, the uses proposed in the petition may be modified and conditions and limitations placed upon them to insure compatibility of the uses with land use plans and uses in the surrounding area.~~

~~Section 4.23. Review, Recommendation and Approval of Petitions and Motions.~~

~~(a) Guidelines for review: Each petition, recommendation, or motion for establishment of a conditional use overlay district shall be reviewed by the Planning Department and the Planning Board to determine whether or not the proposed zoning is reasonable, neither arbitrary nor unduly discriminatory, and in the public interest. In making such a determination, the following factors shall be considered: (i) the size of the tract in question; (ii) the compatibility of the proposed uses with the existing land use plans; (iii) the benefits and detriments which might result from the proposed amendment for the owners of the property in the proposed district, their neighbors, and the surrounding community; (iv) the relationship and compatibility between the uses proposed for the district and the uses currently present in adjacent property; and (v) any other relevant factors peculiar to the facts and circumstances of the particular case.~~

~~(b) Recommendations and approval: Following a public hearing, the Planning Board may recommend approval of and the Town Council shall approve a proposed conditional use overlay district and the conditions and other performance criteria imposed upon the uses to be allowed in the district only upon a finding that the proposed zoning and performance criteria are reasonable, neither arbitrary or unduly discriminatory, and in the public interest. Failure to approve proposed zoning shall constitute a denial. Approval of a conditional use overlay district shall constitute a conditional use permit authorizing the implementation of the uses approved subject to the conditions and other performance criteria imposed thereon.~~

~~Uses allowed in a conditional use overlay district shall be subject also to any conditions and performance criteria imposed by this ordinance or otherwise by law in the underlying general zoning district, unless any such general condition or performance criteria is expressly precluded or modified by the specific conditions and performance criteria imposed on the conditional use.~~

~~(c) Modifications of proposals: During the process of review and approval the Planning Department and Planning Board may consider and recommend modifications of the proposed uses and impose conditions and other performance criteria, or modifications thereof, on such uses in order to make the determinations and findings required for approval of the proposed zoning. Such modifications and conditions and other performance criteria may include, but are not limited to, physical improvements and maintenance requirements; reduction of dwelling units allowed by the underlying zoning district; limitation on the maximum building height and coverage of the site; requirements for access to the site, off-street parking and loading, and internal circulation; landscaped or open space buffers; and operational limitations such as days and hours of operation, numbers of employees, exterior lighting, and noise, odor and smoke emission controls. Submission of site plans reflecting all approved performance criteria to the Planning Department or Inspections Department may be required for use by such departments for subdivision approvals and the issue of zoning and construction permits.~~

AMEND Article X. Definition of Terms, Section 10.2. Definitions of Specific Terms and Words, by INSERTING the following:

Board of Commissioners: The governing body of Town of Falcon.

Code Enforcement Coordinator: The individual assigned the position with this title within the Cumberland County's job position classifications that is charged with the day-to-day interpretation and enforcement of this ordinance.

Conditional use: A use or occupancy of a structure, or a use of land, permitted only upon the successful rezoning to a Conditional Use District and subsequent issuance of a Conditional Use Permit and made subject to the limitations and conditions specified therein.

Coordinator: See *Code Enforcement Coordinator*.

Town Subdivision Ordinance: The Falcon Subdivision Ordinance, which governs the division and development of property located within the jurisdictional boundary of the Town of Falcon.

Density: The average number of families, persons, housing units or buildings per unit of land.

Director: See *Planning and Inspections Director*.

Loading area or space, off-street: An area logically and conveniently located for bulk pickups and deliveries, and accessible to such vehicles. Required off-street loading space is not to be included as off-street parking space in computing required off-street parking space.

Ordinance: This, the Town of Falcon Zoning Ordinance, including any amendments. Whenever the effective date of the ordinance is referred to, the reference includes the effective date and the effective date of any amendment to the Town Zoning Ordinance. This ordinance consists of two parts – a text and a map, in hardcopy or digital format.

Planning and Inspections Department: The County agency that is contracted with the Town for planning and inspections services and is responsible for and tasked with planning, land use and inspections matter for the Town and the surrounding area.

Planning and Inspections Director: The individual responsible for the leadership of the Cumberland County Planning and Inspections Department, and who serves as advisor to the Cumberland County Joint Planning Board. Throughout this ordinance, references to *Director* include the individual assigned to this position and/or the Director's designee.

Planning and Inspections Staff: The staff members assigned to the Cumberland County Planning and Inspections Department who, under the supervision of the Planning and Inspections Director, supports the Cumberland County Joint Planning Board and the Town on planning, land use and inspections matters.

Site plan: A scaled drawing depicting uses and structures proposed for a parcel of land as required by this ordinance and the Town's Subdivision Ordinance. It includes such things as lot lines, streets, building sites and setbacks, means of access, parking, reserved open space, buildings, major landscape features—both natural and manmade—and, depending on requirements, the locations of proposed utility lines. The specific criteria for site plans are found in Section 12.45.

Special Use: Those uses for which a permit is required for the proposed activities which are essentially compatible with other uses or activities permitted in a zoning district, but which present unique challenges or possess unique characteristics, or qualities that require comprehensive review at a quasi-judicial public hearing by the Town's Board of Adjustment and which may be allowed only after the findings of fact and the imposition of reasonable conditions.

Zoning: A police power measure, enacted by the Town Board of Commissioners pursuant to enabling statutes, in which the Town is divided into districts or zones within which Permitted, Conditional, and Special Uses are established, as are regulations governing lot size, building bulk, placement, and other development standards. Requirements vary from district to district, but they must be uniform within districts.

Zoning district: An area established by this ordinance where the individual properties are designed to serve compatible functions and to be developed at compatible scales.

AMEND Article X. Definition of Terms, Section 10.2. Definitions of Specific Terms and Words, as follows:

Joint Planning ~~b~~-Board (also Planning Board): The Cumberland County Joint Planning Board created by and with members appointed by the Town, County Board of Commissioners and other municipalities within Cumberland County for purposes of offering recommendations to the Commissioners and the governing body of contracted municipalities on planning and land use matters and issuing final rulings on matters specifically delegated to the board by the Town Commissioners.

AMEND Article XII. Administrative Provisions, Sub-section (b) of Section 12.5. Amendments, Sub-section 12.51. Submissions to and Consideration Thereof by the Planning Board, as follows:

12.51. Submissions to and Consideration Thereof by the Planning Board

(b)The planning board, upon receipt of a proposal for amendment, by petition or otherwise, and upon notice to land owners as by law required, will consider each proposed amendment or change and may hold public hearings, public notice of which shall be given, for such consideration. Upon petition or other proposal for an amendment of the ordinance for the purpose of establishing a specific zoning district or specifically establishing a specific zoning district or for the purpose of establishing a Conditional Use District or specifically changing the

classification of a existing district or part thereof, the planning board may consider amending the ordinance to provide a classification or reclassification other than that specifically requested, and so recommend, provided that the notice to land owners and notice of public hearing required by law states that classifications or reclassifications other than that requested will be considered. If, upon receipt of a proposal to reclassify one type of general zoning district to another, the planning board proposes or has received a proposal from the Town Board of Commissioners ~~town council in lieu thereof~~ to consider establishment of a Conditional Use District ~~an overlay district~~, it must refer such proposal to the owners of the property to be included in such ~~overlay~~ district for submission of a petition in accordance with the provisions of Article IV hereof; no consideration of such a proposal can be made unless and until such a petition is received.

AMEND Article XII. Administrative Provisions, Sub-section (c) of Section 12.5. Amendments, Sub-section 12.53. Approval by the Town Council, as follows:

12.53. Approval by the Town Board of Commissioners ~~Council~~

(c) To approve any amendment, supplement, change, modification, or repeal of any provision of this ordinance, the Town Board of Commissioners ~~Council~~ shall address the consistency of the action with the current Land Use Plan; and make a finding and determination, entered in the minutes of the meeting, that such action is reasonable, neither arbitrary or unduly discriminatory ~~discriminating~~, and in the public interest. In the case of the approval of the establishment of a general zoning district or the reclassification of an existing general zoning district to another type of general zoning district, the board shall make an additional finding and determination that the property within the district is suitable for all uses permitted by the new classification. Consideration of any Conditional Use District is governed by Article IV of this ordinance.

**TOWN OF FALCON ZONING ORDINANCE
FEE SCHEDULE**

REQUESTED ZONING DISTRICTS¹	LESS THAN 5 ACRES	5 TO 50 ACRES	50 TO 100 ACRES	100+ ACRES
R40A <u>R20</u> R20A R15 R15A <u>R10</u> <u>R6</u>	\$200	\$400	\$500	\$500
O&I C1 C(P) & C3 M	\$400	\$500	\$600	\$800
CONDITIONAL USE OVERLAY DISTRICTS ² RESIDENTIAL	\$500	\$500	\$500	\$500
CONDITIONAL USE OVERLAY DISTRICTS ² NON-RESIDENTIAL	\$700	\$800	\$800	\$800
ALL TEXT AMENDMENTS ZONING ORDINANCE TEXT SUBDIVISION ORDINANCE TEXT	\$100 \$ 5 \$ 5			
<u>BOARD OF ADJUSTMENT*</u>				
SPECIFIED CONDITIONAL USES VARIANCES ADMINISTRATIVE REVIEW INTERPRETATIONS NONCONFORMING USES		\$200 \$100		

* A non-refundable fee of twenty-five (\$25.00) dollars is to be paid to the Town of Falcon for processing and advertising (excludes requests originating with the Town of Falcon).

* Fees are in accordance with the schedule adopted by the Town of Falcon

¹If more than one zoning district is requested in the same application, the highest fee for the district requested will apply.

²If a general rezoning is requested and based on recommendations of the Joint Planning Board or Board of Commissioners, a Conditional Use ~~Overlay~~ District application is to be filed, the original application fee will be credited toward the Conditional Use ~~Overlay~~ District application fee.

Revised: August 19, 2008