

**STATEMENT OF TOWN COUNCIL AND ORDINANCE AMENDING THE OFFICIAL ZONING DISTRICT MAP OF THE TOWN OF APEX TO CHANGE THE ZONING OF APPROXIMATELY 1.45 ACRES LOCATED AT 0 & 6633 APEX BARBECUE ROAD FROM RESIDENTIAL AGRICULTURAL (RA) TO NEIGHBORHOOD BUSINESS-CONDITIONAL ZONING (B1-CZ)**

**#21CZ23**

**WHEREAS**, Kethamakka & Emmadi Properties, LLC., owner/applicant (the “Applicant”), submitted a completed application for a conditional zoning on the 1<sup>st</sup> day of September 2021 (the “Application”). The proposed conditional zoning is designated #21CZ23;

**WHEREAS**, the Director of Planning and Community Development for the Town of Apex, Dianne Khin, caused proper notice to be given (by publication and posting) of a public hearing on #21CZ23 before the Planning Board on the 8<sup>th</sup> day of November 2021;

**WHEREAS**, the Apex Planning Board held a public hearing on the 8<sup>th</sup> day of November 2021, gathered facts, received public comments and formulated a recommendation regarding the application for conditional zoning #21CZ23. A motion was made by the Apex Planning Board to recommend approval; the motion passed by a vote of 6 to 0 for the application for #21CZ23;

**WHEREAS**, pursuant to N.C.G.S. §160D-601 and Sec. 2.2.11.E of the Unified Development Ordinance, the Director of Planning and Community Development caused proper notice to be given (by publication and posting), of a public hearing on #21CZ23 before the Apex Town Council on the 23<sup>rd</sup> day of November 2021;

**WHEREAS**, the Apex Town Council held a public hearing on the 23<sup>rd</sup> day of November 2021. Sarah Van Every, Senior Planner, presented the Planning Board's recommendation at the public hearing;

**WHEREAS**, all persons who desired to present information relevant to the application for #21CZ23 and who were residents of Apex or its extraterritorial jurisdiction, or who owned property adjoining the property for which the conditional zoning is sought, were allowed to present evidence at the public hearing before the Apex Town Council. No one who wanted to speak was turned away;

**WHEREAS**, the Apex Town Council finds that the approval of the rezoning will amend the 2045 Land Use Plan to Commercial Services: The 2045 Land Use Map designation of Commercial Services is consistent with the zoning district Neighborhood Business-Conditional Zoning (B1-CZ). The Apex Town Council has further considered that the proposed rezoning to Neighborhood Business-Conditional Zoning (B1-CZ) will maintain the character and appearance of the area and provide the flexibility to accommodate the growth in population, economy, and infrastructure consistent with that contemplated by the 2045 Land Use Map;

**WHEREAS**, the Apex Town Council finds that the approval of the rezoning is reasonable and in the public interest in that the rezoning will allow for non-residential development that will serve the surrounding neighborhoods and will increase the tax base; and

**WHEREAS**, the Apex Town Council by a vote of 3 to 2 approved Application #21CZ23 rezoning the subject tracts located at 0 & 6633 Apex Barbecue Road from Residential Agricultural (RA) to Neighborhood Business-Conditional Zoning (B1-CZ).

**NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF APEX**

**Section 1:** The lands that are the subject of the Ordinance are those certain lands described in Attachment “A” – Legal Description which is incorporated herein by reference, and said lands are hereafter referred to as the “Rezoned Lands.”

**Section 2:** The Town of Apex Unified Development Ordinance, including the Town of Apex North Carolina Official Zoning District Map which is a part of said Ordinance, is hereby amended by changing the

## **Ordinance Amending the Official Zoning District Map #21CZ23**

zoning classification of the “Rezoned Lands” from Residential Agricultural (RA) to Neighborhood Business-Conditional Zoning (B1-CZ) District, subject to the conditions stated herein.

**Section 3:** The Director of Planning and Community Development is hereby authorized and directed to cause the said Official Zoning District Map for the Town of Apex, North Carolina, to be physically revised and amended to reflect the zoning changes ordained by this Ordinance.

**Section 4:** The “Rezoned Lands” are subject to all of the following conditions which are imposed as part of this rezoning:

The Rezoned Lands may be used for, and only for, the uses listed immediately below. The permitted uses are subject to the limitations and regulations stated in the UDO and any additional limitations or regulations stated below. For convenience, some relevant sections of the UDO may be referenced; such references do not imply that other sections of the UDO do not apply.

- |                                       |                                   |
|---------------------------------------|-----------------------------------|
| 1. School, public or private*         | 14. Financial institution         |
| 2. Veterinary clinic or hospital      | 15. Floral shop                   |
| 3. Vocational school*                 | 16. Greenhouse or nursery, retail |
| 4. Utility, minor                     | 17. Health/fitness center or spa  |
| 5. Botanical garden                   | 18. Newsstand or gift shop        |
| 6. Greenway                           | 19. Personal service              |
| 7. Park, active                       | 20. Printing and copying services |
| 8. Park, passive                      | 21. Real estate sales             |
| 9. Medical or dental office or clinic | 22. Retail sales, general         |
| 10. Medical or dental laboratory (S)  | 23. Studio for art                |
| 11. Office, business or professional  | 24. Tailor shop                   |
| 12. Barber and beauty shop            | 25. Upholstery service            |
| 13. Book store                        | 26. Pet services                  |

### **Zoning Conditions:**

1. The building exterior shall be high quality materials, including but not limited to brick, wood, stacked stone, other native stone, and tinted/textures concrete masonry units. Standards shall comply with UDO Section 9.3.5
2. EIFS or synthetic stucco shall not be used in the first forty inches (40”) above grade.
3. The building exterior shall have more than one material color.
4. The building shall have more than one parapet height.
5. Only full cut-off lighting fixtures and fixtures with external house-side shields shall be allowed where non-residential properties are adjacent to residential properties.
6. The parcels shall be served exclusively by a single right-in/right-out access to Apex Barbecue Road. The access shall be subject to approval by the Town of Apex and NCDOT.
7. All non-residential building shall provide a solar conduit for the future installation of rooftop solar panels.
8. A 10’ wide landscape area shall be provided along the southern boundary of the property abutting the Scotts Ridge Elementary School property. This planting area shall be to a Type ‘B’ buffer standard.

\*The property may be used as a “School, public or private” or “Vocational school” land use only if recombined with the Scotts Ridge Elementary School site.

## Ordinance Amending the Official Zoning District Map #21CZ23

The following conditions are provided as a result of the Environmental Advisory Board (EAB) meeting and have been incorporated in the rezoning request for the development:

1. Existing large trees onsite shall be evaluated for possible preservation. Tree canopy shall be prioritized medium to large, healthy, desirable species. Preservation will be coordinated with staff during the Minor Site Plan review.
2. Plant trees as designed for efficiency, including:
  - a. Plant deciduous shade trees on southern side of buildings.
  - b. Plant evergreen trees as a windbreak on northern side of buildings.
3. Increase biodiversity
  - a. Plant native flora (Refer to the Apex Design& Development Manual for approved native species).
4. Include landscaping that requires less irrigation and chemical use.
  - a. Plant warm season grasses for drought-resistance.
5. Install one (1) pet waste station within the development.
6. Include solar conduit in building design.
7. Lighting with a color temperature of 3000K or less shall be used for outside installations.

**Section 5:** The "Rezoned Lands" shall be perpetually bound to the conditions imposed including the uses authorized, unless subsequently changed or amended as provided for in the Unified Development Ordinance. Site plans for any development to be made pursuant to this amendment to the Official Zoning District Map shall be submitted for site plan approval as provided for in the Unified Development Ordinance.

**Section 6:** This Ordinance shall be in full force and effect from and after its adoption.

Motion by Council Member \_\_\_\_\_

Seconded by Council Member \_\_\_\_\_

With \_\_\_\_ Council Member(s) voting "aye."

With \_\_\_\_ Council Member(s) voting "no."

This the \_\_\_\_ day of \_\_\_\_\_ 2021.

**TOWN OF APEX**

\_\_\_\_\_  
Mayor

**ATTEST:**

\_\_\_\_\_  
Town Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Town Attorney