

STATEMENT OF TOWN COUNCIL AND ORDINANCE AMENDING THE OFFICIAL ZONING DISTRICT MAP OF THE TOWN OF APEX TO CHANGE THE ZONING OF APPROXIMATELY 55.68 ACRES LOCATED AT 3232, 3208, 3212, 3228 US 64 HIGHWAY WEST, 0 AND 7529 CREEKBIRD ROAD FROM RURAL RESIDENTIAL (RR), TECH/FLEX-CONDITIONAL ZONING (TF-CZ #14CZ09), AND WAKE COUNTY RESIDENTIAL 80-W (R-80W) TO TECH/FELX-CONDITIONAL ZONING (TF-CZ)

#22CZ21

WHEREAS, Drew Thigpen, Greenberg Gibbons Properties, owner/applicant (the “Applicant”), submitted a completed application for a conditional zoning on the 3rd day of November 2022 (the “Application”). The proposed conditional zoning is designated #22CZ21;

WHEREAS, the Planning Director for the Town of Apex, Dianne Khin, caused proper notice to be given (by publication and posting) of a public hearing on #22CZ21 before the Planning Board on the 13th day of March 2023;

WHEREAS, the Apex Planning Board held a public hearing on the 13th day of March 2023, gathered facts, received public comments and formulated a recommendation regarding the application for conditional zoning #22CZ21. A motion was made by the Apex Planning Board to recommend approval; the motion passed unanimously for the application for #22CZ21;

WHEREAS, pursuant to N.C.G.S. §160D-601 and Sec. 2.2.11.E of the Unified Development Ordinance, the Planning Director caused proper notice to be given (by publication and posting), of a public hearing on #22CZ21 before the Apex Town Council on the 28th day of March 2023;

WHEREAS, the Apex Town Council held a public hearing on the 28th day of March 2023. Lauren Staudenmaier, Planner II, presented the Planning Board's recommendation at the public hearing;

WHEREAS, all persons who desired to present information relevant to the application for #22CZ21 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 is consistent with the 2045 Land Use Plan and other adopted plans in that: The 2045 Land Use Map designates this area as Office Employment/Commercial Services. This designation on the 2045 Land Use Map includes the zoning district Tech/Flex-Conditional Zoning (TF-CZ) and the Apex Town Council has further considered that the proposed rezoning to Tech/Flex-Conditional Zoning (TF-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 in an area that anticipates non-residential uses and encourage compatible development of the property. The rezoning commits to provide a continuous east to west public vehicular route with sidewalk, provides conditions to mitigate the environmental impact above Town standards, and will allow development that will generate jobs and increase the tax base; and

WHEREAS, the Apex Town Council by a vote of ___ to ___ approved Application #22CZ21 rezoning the subject properties located at 3232, 3208, 3212, 3228 US 64 Highway West, 0 and 7529 Creekbird Road from Rural Residential (RR), Tech/Flex-Conditional Zoning (TF-CZ #14CZ09), and Wake County Residential 80-W (R-80W) to Tech/Flex-Conditional Zoning (TF-CZ).

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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 zoning classification of the "Rezoned Lands" from Rural Residential (RR), Tech/Flex-Conditional Zoning (TF-CZ #14CZ09), and Wake County Residential 80-W (R-80W) to Tech/Flex-Conditional Zoning (TF-CZ) District, subject to the conditions stated herein.

Section 3: The Planning Director 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. Daycare facility
2. Drop-in or short term day care
3. Government service
4. Veterinary clinic or hospital
5. Vocational school
6. Utility, minor
7. Wireless support structure
8. Wireless communication
9. Entertainment, indoor
10. Greenway
11. Park, active
12. Park, passive
13. Youth or day camps
14. Commissary
15. Restaurant, general
16. Dispatching office
17. Medical or dental office or clinic
18. Medical or dental laboratory
19. Office, business or professional
20. Research facility
21. Artisan Studio
22. Convenience store
23. Convenience store with gas sales
24. Grocery, general
25. Grocery, specialty
26. Personal service
27. Printing and copying service
28. Real estate sales
29. Repair services, limited
30. Retail sales, general %
31. Studio for art
32. Tailor shop
33. Upholstery shop
34. Pet services
35. Automotive Accessory Sales and Installation
36. Repair and maintenance, general
37. Vehicle inspection center
38. Laboratory, industrial research
39. Microbrewery
40. Microdistillery
41. Woodworking or cabinet making
42. Wholesaling distribution center
43. Manufacturing and processing (S)
44. Manufacturing and processing, minor
45. Glass Sales
46. Building Supplies, wholesale

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Zoning Conditions:

1. The maximum square footage of uses developed on the Property shall be 500,000 square feet.
2. The use Glass Sales shall be all indoors except what is stored on trucks. Outdoor truck parking for Glass Sales use must be fully screened from any public right-of-way.
3. No more than 15% of any building's square footage shall include outdoor storage.
4. Conditions offered by the applicant to address recommendations of the Environmental Advisory include the following:
 - a. Post development peak runoff shall not exceed pre-development peak runoff for the 24- hour, 1-year, 10-year, and 25-year storm events in accordance with the Unified Development Ordinance.
 - b. The project shall install one (1) sign per SCM to reduce pet waste and prohibit fertilizer, in locations that are publicly accessible, such as adjacent to amenity centers, sidewalks, greenways, or side paths.
 - c. Each building constructed on the property shall be pre-configured with conduit for solar PV systems.
 - d. The project shall use full cutoff LED fixtures that have a maximum color temperature of 3000k for all exterior lighting, including, but not limited to, parking lot and building mounted fixtures.
5. Developer shall dedicate right-of-way for the future interchange and realignment of Jenks Road according to the Apex Transportation Plan.
6. The developer shall provide a continuous east-west public vehicular route (the "East-West Drive") with sidewalk through the site from Goodwin Road to the eastern parcel boundary of the subject property to support the future extension of Lowell Road as planned with the Arden at Summit Pines development.
7. Buildings constructed on the property that are located north of the East-West Drive shall be subject to the following architectural conditions:
 - a. EIFS or synthetic stucco shall not be used in the first four feet above grade.
 - b. The building shall have more than one parapet height.
 - c. Windows and glazing shall be divided to be either square or vertical in proportion so that each section is taller than it.
 - d. The main entry shall be human scaled and emphasized through the use of features such as, but not limited to, column recessed entries, sheltering elements, rooflines, trim, color change, material change and masonry patterns. Recessed arcades, entries flush with the building face and small entries without adjacent windows shall be avoided.
 - e. Service bays shall be screened from surrounding public rights-of-ways or oriented towards the rear of the property. Service bays shall not be oriented towards US 64 Highway.
 - f. A combination of exterior materials may be used for the industrial buildings.
 - g. Exterior Building materials shall not permit the use of vinyl siding.
8. Buildings constructed on the property that are located south of the East-West Drive shall be subject to the following architectural conditions:
 - a. Buildings shall have vertical proportions. Expanses of blank wall shall not exceed sixty (60) feet in width without being interrupted with an architectural feature such as, but not limited to, a column, recess in or projection from the building façade. Permitted setbacks can be used to articulate bays of a building to break up its width. Architectural features such as, but not limited to, columns, piers, rooflines, and brick patterns can be used to divide and create vertical orientation on building facades. This would also include reveals in concrete tilt construction with integrated thin brick and contrasting paint colors, which add visual interest. The first twelve feet (12') in height of the front façade of all buildings shall be a minimum seventy-five percent (75%) brick.

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- b. The main entry shall be human scaled and emphasized through the use of features such as, but not limited to, columns, piers, windows, recessed entries, sheltering elements, rooflines, trim, color change, material change and masonry patterns. Recessed arcades, entries flush with the building face and small entries without adjacent windows shall be avoided.
 - c. The orientation of drive-thru lanes, pick-up windows, and other utilitarian building functions should not be oriented toward or located adjacent the street. When drive-thru lanes are located adjacent to a street, they shall be screened through the use of low walls and/or landscaping. Drive-thrus shall not front on US 64 Highway. Service bays shall be screened from surrounding public rights-of-ways or oriented towards the rear of the property. Service bays shall not be oriented towards US 64 Highway.
 - d. Each façade shall have a rhythm that is repeated through the pattern of wall and openings. The building façade shall have an identifiable base, body, and cap with horizontal elements separating these components. Buildings shall not have blank side walls creating a false front appearance.
 - e. The street level of the facades shall provide human scaled entries including, but not limited to, recessed entries, sheltering elements and adjacent storefront windows. Recessed arcades, entries flush with the building face, and small entries without adjacent windows shall be avoided.
 - f. Windows and storefront glazing shall be provided with different proportions to create a high-quality building design.
 - g. Thirty-five (35%) of glazing shall be provided at the street level. Overall building proportions shall be expressed in the window proportions. Expanses of vertical window which give the overall appearance of horizontal massing shall be avoided.
 - h. The building shall have more than one parapet height. Roofs may vary in compliance with UDO 9.3.2
 - i. Buildings shall be architecturally compatible and include more than one material color.
 - j. The exterior materials shall include a combination of building materials. The primary (front) façade of the main buildings to be considered include:
 - i. Brick masonry
 - ii. Decorative concrete block (either integrally colored or textured)
 - iii. Stone accents
 - iv. Aluminum storefronts with anodized or pre-finished colors.
 - v. EIFS cornices and parapet trim
 - vi. Precast concrete
 - vii. Concrete tilt with a base wall paint color in conjunction with varying complimentary accent paint colors and integral thin brick, with associative percentages as outlined in item 1 above.
 - k. Exterior materials that shall not be allowed are as follows:
 - i. Vinyl siding
 - ii. Painted, smooth faced concrete block (decorative blocks are acceptable)
 - iii. Metal walls
 - l. EIFS or synthetic stucco shall not be used in the first four feet above grade and shall be limited to only 25% of each building façade.
 - m. Soffits and fascia materials may be EIFS, architectural panels, or other quality materials as determined by the building Architect during Site Plan review.
9. The perimeter buffer along the eastern boundary of the assemblage – adjacent to Wake County PINs 0722-46-5567, 0722-46-3330, and 0722-46-1777 – shall be a minimum of 30' and shall be planted or preserved to the Type A buffer standard. The aforementioned buffer may be removed if the adjacent properties are developed with uses of the same or higher land use class according to UDO Sec. 8.2.6.B.4.

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10. The project shall provide additional water quality stormwater controls to reduce the overall nitrogen export for the site to less than 10 lbs/ac/yr through the installation of State approved Stormwater Control Measures (SCMs). The final selection of the SCMs used to reduce the nitrogen export from the site shall be selected by the design team and coordinated with staff during Site Plan and Construction Document design and review.
11. The following language shall be added to any subdivision and/or site plan final plats for this project:
AVIGATION NOTICE: Deck Air Park, an active, general aviation airport open to the public, is located near this subdivision, and the flight paths of aircraft landing, taking off, and flying nearby pass directly over this subdivision. The lots shown on this plat will be subject to the impacts of the aviation uses being conducted to, from, at and nearby Deck Air Park for so long as that airport may continue to be used.

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 _____ 2023.

TOWN OF APEX

Jacques K. Gilbert
Mayor

ATTEST:

Allen Coleman, CMC, NCCCC
Town Clerk

APPROVED AS TO FORM:

Town Attorney