

STATEMENT OF TOWN COUNCIL AND ORDINANCE AMENDING THE OFFICIAL ZONING DISTRICT MAP OF THE TOWN OF APEX TO CHANGE THE ZONING OF APPROXIMATELY 5.97 ACRES LOCATED AT 2305 AND 2509 KELLY ROAD FROM RESIDENTIAL AGRICULTURAL (RA) TO HIGH DENSITY SINGLE-FAMILY RESIDENTIAL-CONDITIONAL ZONING (HDSF-CZ)

#24CZ17

WHEREAS, Vasu Kollipara, owners/applicant (the “Applicant”), submitted a completed application for a conditional zoning on the 1st day of October 2024 (the “Application”). The proposed conditional zoning is designated #24CZ17;

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 #24CZ17 before the Planning Board on the 13th day of January 2025;

WHEREAS, the Apex Planning Board held a public hearing on the 13th day of January 2025, gathered facts, received public comments and formulated a recommendation regarding the application for conditional zoning #24CZ17. A motion was made by the Apex Planning Board to recommend approval; the motion passed unanimously for the application for #24CZ17;

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 #24CZ17 before the Apex Town Council on the 28th day of January 2025;

WHEREAS, the Apex Town Council held a public hearing on the 28th day of January 2025. Joshua Killian, Planner, presented the Planning Board's recommendation at the public hearing;

WHEREAS, all persons who desired to present information relevant to the application for #24CZ17 were allowed to present evidence at the public hearing before the Apex Town Council. No one who wanted to speak was turned away;

WHEREAS, following the public hearing on the 28th day of January 2025, in accordance with Section 2-31 of the Apex Town Code, the Town Council approved a motion to postpone the vote for Application #24CZ17 and scheduled the vote for the 25th day of February 2025;

WHEREAS, the Apex Town Council finds that the approval of the rezoning is not consistent with the 2045 Land Use Plan and other adopted plans in that the 2045 Land Use Map designates this area as Mixed Use: High Density Residential/Office Employment/Commercial Services and approval of this rezoning will automatically amend the 2045 Land Use Map to Medium/High Density Residential. This designation on the 2045 Land Use Map includes the zoning district High Density Single-Family Residential-Conditional Zoning (HDSF-CZ) and the Apex Town Council has further considered that the proposed rezoning to High Density Single-Family Residential-Conditional Zoning (HDSF-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 a residential subdivision that will continue the density and character of the adjacent residential development within West Village. The rezoning’s omission of commercial uses is informed by the known streams on site which limits the developable land within the area to be rezoned; and

WHEREAS, the Apex Town Council by a vote of 3 to 2 approved Application #24CZ17 rezoning the subject tract located at 2305 and 2509 Kelly Road from Residential Agricultural (RA) to High Density Single-Family Residential-Conditional Zoning (HDSF-CZ).

Ordinance Amending the Official Zoning District Map #24CZ17

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 Residential Agricultural (RA) to High Density Single-Family Residential-Conditional Zoning (HDSF-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. All uses listed below are permitted (P) uses unless noted otherwise.

- | | |
|------------------------|---------------------------------|
| 1. Accessory apartment | 6. Greenway |
| 2. Duplex | 7. Park, active |
| 3. Single-family | 8. Park, passive |
| 4. Townhouse | 9. Recreation facility, private |
| 5. Townhouse, detached | 10. Utility, minor |

Zoning Conditions:

1. There shall be a maximum of thirty (30) residential units on the property.
2. The following architectural conditions shall apply to ***townhouse and detached townhouse*** units:
 - a. Vinyl siding is not permitted; however, vinyl windows, decorative elements, and trim are permitted.
 - b. The roofline cannot be a single mass; it shall be broken up either horizontally or vertically between, at a minimum, every other unit.
 - c. Garage doors shall have either windows, decorative details, or carriage-style adornments on them.
 - d. For units with front-facing garages, the front door entrance shall have a prominent covered porch/stoop area leading to the front door.
3. The following architectural conditions shall apply to ***single-family*** units:
 - a. Vinyl siding is not permitted; however, vinyl windows, decorative elements and trim are permitted.
 - b. All homes shall have either a crawl space foundation or a raised slab foundation which at a minimum rises at least 20 inches from average grade across the front of the house to the finished floor level at the front door.
 - c. Garage doors shall have windows, decorative details, or carriage-style adornments.

Ordinance Amending the Official Zoning District Map #24CZ17

- d. The garage shall not protrude more than 4 feet beyond the front façade or front porch. Living space above a garage shall not be considered part of the front façade.
 - e. The roof shall be pitched at 5:12 or greater.
- 4. The following architectural conditions shall apply to **duplex** units:
 - a. Vinyl siding is not permitted, however vinyl windows, decorative elements and trim are permitted
 - b. All units shall have a crawl space or a raised foundation which at a minimum, rises at least 20 inches from average grade across the front of the house to the finished floor level at the front door.
 - c. Garage doors shall have windows, decorative details, or carriage style adornments.
 - d. Garages cannot protrude more than 5 feet from the front façade or front porch.
 - e. The rear and side elevations of units that can be seen from the right of way shall have trim around the windows.
 - f. All rear elevations shall include a change in roofline plus an additional projection on the rear façade such as, but not limited to, a bay window, cantilever, fireplace, or enclosed porch.
- 5. The development shall install one (1) sign per Stormwater Control Measure to prohibit fertilizer in a location that is publicly accessible, such as adjacent to a sidewalk.
- 6. At least 75% of newly installed plants shall be native or nativar species of North Carolina. Landscaping will be coordinated with and approved by the Planning Department at site or subdivision review.
- 7. Landscaping shall include warm season grasses.
- 8. The development shall install at least two pet waste stations.
- 9. Each unit shall have at least one electrical receptacle suitable for electric vehicle charging with minimum voltage of 220V.
- 10. All units shall be pre-configured with conduit for a solar energy system.
- 11. Homeowner Association covenants shall not restrict the construction of accessory dwelling units.
- 12. Subject to Town of Apex and North Carolina Department of Transportation approval, developer shall dedicate right of way for the length of the property's Kelly Road frontage, measured 55 feet from the existing centerline of Kelly Road, and widen and improve Kelly Road for the length of the property's Kelly Road frontage based on an 84-foot back-to-back curb and gutter 4-lane divided roadway with 5-foot sidewalk in a 110-foot right of way with bike lanes consistent with the Town of Apex Bicycle and Pedestrian System Plan Map (the "Road Widening"). There are one or more streams on the property and the Road Widening will require approval from the U.S. Army Corps of Engineers and any other applicable governing body (the "Permitting Body") to permit the stream disturbance. If the Permitting Body does not permit the stream disturbance, developer shall pay a fee in lieu for the Road Widening.
- 13. The development shall construct 5-foot sidewalks on both sides of internal streets.
- 14. The development shall construct a stub street to PIN 0731366481 in a location determined by developer and coordinated with Town staff during Master Subdivision and Construction Document review.

Ordinance Amending the Official Zoning District Map #24CZ17

15. A minimum of five percent (5%) of the total residential units on the property shall be affordable housing units. The affordable units may be for sale or for rent units, at the election of developer prior to issuance of building permits for the affordable units. Final affordable housing unit floor plan selection which includes unit size and bedroom size will be at the discretion of the developer. If the affordable units calculation results in a fraction between 0.50 and 0.99, the affordable units shall be rounded up to the nearest whole number. If the affordable units calculation results in a fraction between 0.01 and 0.49, the affordable units shall be rounded down to the nearest whole number.

For sale affordable units (the "For Sale Units") shall be subject to the following terms and conditions:

- The For Sale Units shall be constructed on-site and sold (includes unit price and lot price) at a mutually agreeable maximum affordable median income ownership initial sales price (the "Initial Sales Price").
- The For Sale Units shall be occupied by households earning no more than one-hundred thirty five (135%) of the Raleigh NC Metropolitan Statistical Area (MSA), Area Median Income (AMI) as most recently published by HUD (the "Income Limit"). For purposes of calculating the Initial Sales Price for the For Sale Units, affordable shall mean a reasonable down payment and monthly housing costs expected during the first calendar year of occupancy, including utilities or utility allowances, mortgage loan principal and interest, mortgage insurance, property taxes, homeowner's insurance, homeowner's association dues, if any, and all other property assessments, dues and fees assessed as a condition of property ownership (the "Housing Costs"). For purposes of the calculation, monthly Housing Costs shall not exceed thirty percent (30%) of the Income Limit divided by twelve (12).
- A restrictive covenant (i.e. resale deed restriction) with a minimum affordability period of twenty (20) years (the "Affordability Period") shall be recorded in the Wake County Registry against the For Sale Units concurrently at the close of escrow upon the sale of each For Sale Unit.
- Developer will work with the Town to identify qualifying buyers for the first sale of the For Sale Units (the "First Sale"). Following the First Sale of the For Sale Units, Developer shall not be responsible for managing the For Sale Units or performing marketing, applicant screening, and selection related to future sales of the For Sale Units. Town staff will assist with the administrative duties of the For Sale Units during the Affordability Period.

For rent affordable units (the "Rental Units") shall be subject to the following terms and conditions:

- The Rental Units shall be occupied by low-income households earning no more than eighty percent (80%) of the Raleigh, NC Metropolitan Statistical Area (MSA) Area Median Income, as most recently published by the U.S. Department of Housing and Urban Development (HUD) for a period of twenty (20) years starting from the date of issuance of the first residential Certificate of Occupancy (the "Affordability Period").
- Prior to issuance of the first Certificate of Occupancy for the Rental Units, a restrictive covenant between the Town and property owner shall be executed and recorded in the Wake County Registry to memorialize the affordable housing terms and conditions.
- During the Affordability Period, the property owner shall submit annual compliance reports to the Town to verify compliance with the affordable housing terms and conditions.

Ordinance Amending the Official Zoning District Map #24CZ17

- Following expiration of the Affordability Period, this affordable housing condition shall expire, and the property owner shall be relieved of all obligations set forth in this affordable housing condition, and the Rental Units may be freely marketed and leased at market rate rents.

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 _____ 2025.

TOWN OF APEX

Jacques K. Gilbert
Mayor

ATTEST:

Allen Coleman, CMC, NCCCC
Town Clerk

APPROVED AS TO FORM:

Town Attorney