

STATEMENT OF TOWN COUNCIL AND ORDINANCE AMENDING THE OFFICIAL ZONING DISTRICT MAP OF THE TOWN OF APEX TO CHANGE THE ZONING OF APPROXIMATELY 4.1384 ACRES LOCATED AT 1316, 1314, 0, 1320, 1332, 1400, 1328, AND 0 CENTER STREET FROM HIGH DENSITY SINGLE-FAMILY RESIDENTIAL (HDSF), RESIDENTIAL AGRICULTURAL (RA), OFFICE AND INSTITUTIONAL-CONDITIONAL USE (O&I-CU #04CU04 & #04CU10), AND LIGHT INDUSTRIAL-CONDITIONAL USE (LI-CU #97CU22B) TO HIGH DENSITY MULTI-FAMILY RESIDENTIAL-CONDITIONAL ZONING (HDMF-CZ) AND OFFICE AND INSTITUTIONAL-CONDITIONAL ZONING (O&I-CZ)

#22CZ27

WHEREAS, Jason Barron, Morningstar Law Group, owners/applicant (the “Applicant”), submitted a completed application for a conditional zoning on the 1st day of December 2022 (the “Application”). The proposed conditional zoning is designated #22CZ27;

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 #22CZ27 before the Planning Board on the 11th day of March 2024;

WHEREAS, the Apex Planning Board held a public hearing on the 11th day of March 2024, gathered facts, received public comments and formulated a recommendation regarding the application for conditional zoning #22CZ27. A motion was made by the Apex Planning Board to recommend approval; the motion passed by a vote of 7-1 for the application for #22CZ27;

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 #22CZ27 before the Apex Town Council on the 9th day of April 2024;

WHEREAS, the Apex Town Council held a public hearing on the 9th day of April 2024. 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 #22CZ27 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 April 9, 2024 and vote by the Town Council to deny the rezoning, on April 23, 2024 at a regular meeting of the Apex Town Council and in accordance with Section 2-36 of the Apex Town Code, the Town Council approved a motion to reconsider the vote for Application #22CZ27 and scheduled the reconsideration for the 25th day of June 2024;

WHEREAS, the Apex Town Council finds that the approval of the rezoning of the portion of the Rezoned Lands designated as Office and Institutional-Conditional Zoning (O&I-CZ) district is consistent with the 2045 Land Use Plan and other adopted plans in that: The 2045 Land Use Map designates that area as Office Employment which includes the zoning district Office and Institutional-Conditional Zoning (O&I-CZ). The rezoning of additional portions of the Rezoned Lands to High Density Multi-family Residential-Conditional Zoning (HDMF-CZ) is not consistent with the 2045 Land Use Plan and other adopted plans in that: the 2045 Land Use Map designated this additional area Office Employment, however approval of this rezoning will automatically amend 2045 Land Use Plan to designate the Rezoned Lands identified as High Density Multi-Family Residential-Conditional Zoning (HDMF-CZ) to High Density Residential. The Apex Town Council has further considered that the proposed rezoning to Office and Institutional-Conditional Zoning (O&I-CZ) and High Density Multi-Family-Conditional Zoning (HDMF-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 Plan;

WHEREAS, the Apex Town Council finds that the approval of the rezoning is reasonable and in the public interest in that: The proposed rezoning will provide affordable housing, increase a mix of housing inventory, and provide a transition in land use of the surrounding area; and

Ordinance Amending the Official Zoning District Map #22CZ27

WHEREAS, following reconsideration, the Apex Town Council by a vote of 3 to 2, with Mayor Gilbert voting in favor to break the tie, approved Application #22CZ27 rezoning the subject properties located at 1316, 1314, 0, 1320, 1332, 1400, 1328, and 0 Center Street from High Density Single-Family Residential (HDSF), Residential Agricultural (RA), Office and Institutional-Conditional Use (O&I-CU #04CU04 & #04CU10), and Light Industrial-Conditional Use (LI-CU #97CU22B) to High Density Multi-Family Residential-Conditional Zoning (HDMF-CZ) & Office and Institutional-Conditional Zoning (O&I-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 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 High Density Single-Family Residential (HDSF), Residential Agricultural (RA), Office and Institutional-Conditional Use (O&I-CU #04CU04 & #04CU10), and Light Industrial-Conditional Use (LI-CU #97CU22B) to High Density Multi-Family Residential-Conditional Zoning (HDMF-CZ) & Office and Institutional-Conditional Zoning (O&I-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.

Permitted Uses and Limitations:

Uses in the HDMF-CZ District

- | | |
|------------------|---------------------------------|
| 1. Townhouse | 4. Recreation facility, private |
| 2. Park, passive | 5. Park, active |
| 3. Greenway | 6. Utility, minor |

Uses in the O&I-CZ District

- | | |
|-------------------------------------|----------------------------------|
| 1. Park, passive | 10. Real estate sales |
| 2. Greenway | 11. Pharmacy % |
| 3. Park, active | 12. Studio for art |
| 4. Barber and beauty shop | 13. Tailor shop |
| 5. Utility, minor | 14. Pet services |
| 6. Office, business or professional | 15. Health/fitness center or spa |
| 7. Publishing office | 16. Financial institution |
| 8. Personal Service % | 17. Floral shop |
| 9. Printing and copying service | |

Zoning Conditions:

- A. General Conditions:

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1. Development of the property shall, at a minimum, include right-of-way dedication of 55 feet from the centerline of Center Street and thoroughfare frontage widening consistent with the Town's adopted Transportation Plan (and Apex's UDO, including applicable fee-in-lieu provisions) and typical section for a four-lane, median divided thoroughfare. The Applicant is aware of a potential Center Street improvement project being contemplated by NCDOT, having project number U-5825 (the "DOT Widening Project"). The DOT Widening Project may include right-of-way that is different than what is included in the Town's Transportation Plan. At the time of construction drawing approval, the applicant shall be required to dedicate additional right-of-way for Center Street consistent with the latest available plans for the DOT Widening Project, subject to the following: the buffer along Center Street required for development of the property shall be reduced on a one-for-one basis for each foot of additional right-of-way needed for the DOT Widening Project, but in no case shall be less than 15' in width."
 2. There shall be a maximum of 30 dwelling units developed on the property.
 3. If the property is developed for less than thirty (30) townhome dwellings, at least one (1) residential restricted median-income affordable housing townhouse ownership unit (Affordable Housing Unit) shall be constructed onsite and sold at a mutually agreeable maximum affordable housing median-income ownership initial sales price (includes unit price and lot price) that is calculated based upon the one-hundred percent (100%) of the Raleigh, NC Metropolitan Statistical Area (MSA) Area Median Income (AMI) as most recently published by the U.S. Department of Housing and Urban Development (HUD). The Affordable Housing Units shall be occupied by low or median-income households earning no more than one hundred percent (100%) of the Raleigh, NC MSA AMI, adjusted for family size as most recently published by HUD. A restrictive covenant (i.e. resale deed restriction) with a minimum affordability period of ten (10) years shall be recorded against the residential restricted median-income affordable housing townhouse ownership unit concurrently at the close of escrow upon the sale of the Affordable Housing Unit to memorialize the affordable housing terms and conditions. A restrictive covenant (i.e. affordable housing agreement) between the Town and Applicant shall be recorded against the one (1) Affordable Housing Unit lot prior to the issuance of a building permit for such lots to memorialize the affordable housing terms and conditions of the approved zoning condition. Final Affordable Housing Unit floor plan selection which includes the unit size and bedroom size will be at the discretion of the developer. If the property is developed for 30 townhome dwellings, then there shall be two (2) Affordable Housing Units.
 4. Construction and dedication of a public residential street from the intersection of Myrtle Grove Lane at Center Street to the residential parcel(s) is required for the first residential subdivision plat. No additional access points to Center Street shall be permitted. The length of a public street cul-de-sac may be permitted to exceed the requirements of UDO Section 7.2.1.G in order to facilitate the limited access onto Center Street from the subject property.
 5. Subject to approval by NCDOT and the Town, a 5' concrete sidewalk shall be constructed across the property's Center Street frontage in compliance with Town sidewalk standards.
 6. The landscape buffer along the N/F Calvary Chapel Cary, Inc. property may be reduced to 20' to provide public street access to Center Street for alignment with Myrtle Grove Lane.
 7. A stub street shall be provided on the eastern boundary of the subject property adjacent to Calvary Chapel (PIN: 0751090469).
- B. Architectural Conditions
- a. **Residential Component**
 1. There shall be no residential units with garages.
 2. The maximum height of townhome dwellings constructed on the property shall be two (2) stories.
 3. The roofline cannot be a single mass; it must be broken up horizontally and vertically between every unit.

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4. Vinyl siding is not permitted; however, vinyl windows, decorative elements and trim are permitted.
5. Building facades shall have horizontal relief achieved by the use of recesses and projections.
6. The rear and side elevations of the units that can be seen from the right-of-way shall have trim around the windows.
7. Elevations shall have a minimum of three colors.
8. The visible side of a townhouse on a corner lot facing the public street shall contain a decorative element such as, but not limited to, the following elements: trim around the windows and decorative air vents on gable.
9. For buildings containing dwelling units that abut Center Street, such units shall either front Center Street or have a wraparound side porch adjacent to the Center Street right-of-way.
10. The visible side of a townhome on a corner lot facing the public street shall contain at least 3 decorative elements such as, but not limited to, the following elements:
 - a. Windows
 - b. Bay window
 - c. Recessed window
 - d. Decorative window
 - e. Trim around the windows
 - f. Wrap around porch or side porch
 - g. Two or more building materials
 - h. Decorative brick/stone
 - i. Decorative trim
 - j. Decorative shake
 - k. Decorative air vents on gable
 - l. Decorative gable
 - m. Decorative cornice
 - n. Column
 - o. Portico
 - p. Balcony
 - q. Dormer
11. A varied color palette shall be utilized on homes throughout the subdivision to include a minimum of three color families for siding and shall include varied trim, shutter, and accent colors complementing the siding color.

b. Non-Residential Component

1. The front, side, rear, and corner building setbacks for non-residential buildings in the OI-CZ district shall be reduced to 10' on its north, east, and west sides.
2. In the event the existing nonresidential structure is demolished or destroyed, any new non-residential structure built shall incorporate (or use) the following non-residential architecture conditions:

Building Orientation and Hierarchy

- a. Buildings shall be arranged to define, connect, and activate pedestrian edges and public spaces.
- b. Buildings shall be consistent in scale, massing, relationship to the street, and style.
- c. The buildings shall be placed to maintain a consistent street edge. The relationship of the building to the street edge shall emphasize pedestrian circulation. Pedestrian spaces such as sidewalk dining or shaded seating are encouraged. Whenever practical, required parking and open space shall be maintained in the rear or sides of a building.
- d. 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.

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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.

- e. 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.
- f. Buildings on corners are to be treated as gateways with quality design.
- g. Corner buildings shall match or exceed the height of adjacent buildings.
- h. Corner buildings shall have two facades which maintain a relationship to each other although they do not need to be identical.
- i. Service bays should be located in the rear of structures.
- j. The orientation of drive thru- lanes, pick-up windows, and other utilitarian building functions should not be oriented toward or located adjacent the street. If drive-thru lanes must be located adjacent to a street, they shall be screened through the use of low walls and/or landscaping. Pick-up windows shall be de-emphasized through screening and/or architectural elements.

Façade Elements

- k. 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. The body of the building shall constitute a minimum of fifty (50%) percent of the total building height. Buildings shall not have blank side walls creating a false front appearance.
- l. The street level of the facades shall provide human scaled entries including, but not limited to, recessed entries, sheltering elements and adjacent storefront windows. Facades shall incorporate a minimum of two (2) continuous details refined to the scale of twelve (12) inches or less within the first ten (10) feet of the building wall, measured vertically at street level. Recessed arcades, entries flush with the building face, and small entries without adjacent windows shall be avoided.

Windows

- m. Windows and storefront glazing shall be divided to be either square or vertical in proportion so that each section is taller than it is wide.
- n. The highest percentage of glazing shall be provided at the street level. For buildings (where it is appropriate): (1) a minimum of fifty (50%) percent of the street level façade area shall be transparent or spandrel glass; and (2) second floors, where provided, shall have a minimum of thirty-five (35%) percent transparency or spandrel glass for the total façade area. Overall vertical building proportions shall be expressed in the window proportions. Expanses of vertical windows which give the overall appearance of horizontal massing shall be avoided.

Roof Elements

- o. Simple parapet roof edges with varying coping and cornice shall be used on most buildings. The roofline height shall vary from building to building as well as within buildings with wide street frontage.
- p. The building shall have more than one parapet height.
- q. Roof features may include hip roofs or awnings with metal or shingle roofs.

Materials and Colors

- r. Buildings shall be architecturally compatible by way of colors and use of materials.

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- s. The building exterior shall have more than one material color.
- t. 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
- u. Exterior materials that will not be allowed are as follows:
 - i. Vinyl siding
 - ii. Painted, smooth faced concrete block (decorative blocks are acceptable)
 - iii. Metal walls
- v. 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.
- w. Soffit and fascia materials shall be EIFS with crown trim elements.

C. Environmental Conditions:

1. 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.
2. No clearing or land disturbance shall be permitted within the riparian buffer, except the minimum necessary to install required sewer infrastructure and SCM outlets. The SCM water storage and treatment area shall not be permitted within the riparian buffer. The sewer shall be designed to minimize impacts to the riparian buffer.
3. 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.
4. The project shall install at least two (2) pet waste stations throughout the community, in locations that are publicly accessible, such as adjacent to amenity centers, SCMs, sidewalks, greenways, or side paths.
5. Deciduous shade trees shall be planted on the southern side of buildings.
6. The project shall select and install tree, shrub and perennial species with special attention to providing diverse and abundant pollinator and bird food sources, including plants that bloom in succession from spring to fall.
7. Of the vegetation on the assemblage, 75% will be native vegetation.
8. To reduce irrigation requirements, the project shall select and plant only warm season grasses.
9. A minimum of three (3) hardwood tree species shall be used for the landscaping on site.
10. All homes shall be pre-configured with conduit for a solar energy system.
11. Include International Dark Sky Association compliance standards.
 - a. Outdoor lighting shall be shielded in a way that focuses lighting to the ground.
 - b. Lighting that minimizes the emission of blue light to reduce glare shall be used.
 - c. Lighting with a color temperature of 3000K or less shall be used for outside installations and a color temperature of 3000K or less shall be used for outside installations.
12. HOA Covenants shall explicitly permit townhome owners to install solar PV systems on the roof of their homes.

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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 _____ 2024.

TOWN OF APEX

Jacques K. Gilbert
Mayor

ATTEST:

Allen Coleman, CMC, NCCCC
Town Clerk

APPROVED AS TO FORM:

Town Attorney