

STATEMENT OF TOWN COUNCIL AND ORDINANCE AMENDING THE OFFICIAL ZONING DISTRICT MAP OF THE TOWN OF APEX TO CHANGE THE ZONING OF APPROXIMATELY 2.22 ACRES LOCATED AT 5836 OLD SMITHFIELD RD FROM RURAL RESIDENTIAL (RR) TO PLANNED COMMERCIAL-CONDITIONAL ZONING (PC-CZ)

#24CZ02

WHEREAS, Natilee Hinton-Brooks and Inetta L. Hinton, owners/applicants (the “Applicant”), submitted a completed application for a conditional zoning on the February 1, 2024 (the “Application”). The proposed conditional zoning is designated #24CZ02;

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 #24CZ02 before the Planning Board on the 8th day of April 2024;

WHEREAS, the Apex Planning Board held a public hearing on the 8th day of April 2024, gathered facts, received public comments and formulated a recommendation regarding the application for conditional zoning #24CZ02. A motion was made by the Apex Planning Board to recommend approval; the motion passed unanimously for the application #24CZ02;

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 #24CZ02 before the Apex Town Council on the 23rd day of April 2024;

WHEREAS, the Apex Town Council held a public hearing on the 23rd day of April 2024. Shelly Mayo, 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 #24CZ02 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 Mixed Use: Medium Density Residential/Office Employment/ Commercial Services. This designation on the 2045 Land Use Map includes the zoning district Planned Commercial-Conditional Zoning (PC-CZ) and the Apex Town Council has further considered that the proposed rezoning to Planned Commercial-Conditional Zoning (PC-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: it will allow the applicants to operate the “Assembly hall, for-profit” use as they did before the property lost the legal non-conforming status in the late-2000s due to its conversion to a church use. The additional uses will expand the options available to the applicants while maintaining the core nature of the establishment. The proposed conditions will result in minimal required improvements to the existing site, which will allow the local, minority-owned, small business to legally continue as a social hub in this historically underserved, African-American community; and

WHEREAS, the Apex Town Council voted unanimously to approve Application #24CZ02 rezoning the subject tract located at 5836 Old Smithfield Rd from Rural Residential (RR) to Planned Commercial-

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Conditional Zoning (PC-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 zoning classification of the "Rezoned Lands" from Rural Residential (RR) to Planned Commercial-Conditional Zoning (PC-CZ), 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.

The existing nonconforming site shall not be subject to UDO Articles 8 and 9 except as stated below, and provided that all of the following conditions are met:

1. Permitted uses:
 - a. Assembly hall, for profit
 - b. Assembly hall, non-profit
 - c. Church or place of worship
2. The existing buildings shall follow UDO Sec. 10.3 Nonconforming Structures. No additional buildings shall be permitted on site.
3. If the existing building is damaged or destroyed to the extent that it must be rebuilt per UDO Sec. 10.3, the rebuilt building will also meet these conditions:
 - a. The predominant exterior building materials shall be high quality materials, including:
 - 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
 - b. EIFs or synthetic stucco shall not be used in the first forty inches above grade.
 - c. The building exterior shall have more than one material color.

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- d. The building shall have more than one parapet height.
 - e. The main entrance to the building shall be emphasized.
4. The total built upon area for the site shall not exceed 12% without a Stormwater Control Measure (SCM), unless it otherwise meets one or more of the exemptions listed in UDO Sec. 6.1.3.
 5. The 100-foot riparian buffer at the northwestern corner of the property and the 50-foot riparian buffer at the rear property line shall not be disturbed, 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. The required riparian buffers shall also be dedicated as Resource Conservation Area (RCA).
 6. The buffer along Old Smithfield Road shall be a 15-foot Type E buffer.
 7. The buffer along the western property line shall be 10-foot existing undisturbed.
 8. Along the eastern property line, there shall be no required perimeter buffer due to the existing sewer easement.
 9. The site shall not require a Traffic Impact Analysis and no road improvements shall be required. This does not exempt the installation of improvements required for the safe ingress and egress of vehicles and emergency services accessing the site, including, but not limited to, installation of a paved driveway apron, necessary driveway relocation, and other roadway markings and signage associated with the driveway location.
 10. The parking lot may be gravel except for driveway aprons, which shall be concrete, and handicapped spaces, which shall be concrete or asphalt. Gravel parking shall at a minimum meet the following specifications:
 - a. Compacted Subgrade;
 - b. 6 Inches Aggregate Base Course;
 - c. 1.5 Inches #78M Stone; and
 - d. Drive aisles must be repaired or replaced with #78M Stone every six (6) months.
 11. Parking and vehicular use areas shall not be required to be set back from any required buffers. Wheel stops shall be installed to protect vegetated areas from impacts by cars.
 12. No exterior lighting shall be installed on site unless a lighting plan is submitted which meets all provisions of UDO Sec. 8.6, except as required by building code or ADA.
 13. A dumpster shall not be permitted unless it is screened by an enclosure, per UDO Sec. 8.2.8 and the Town of Apex Standard Specifications and Standard Details.
 14. Signs shall not be permitted unless they meet all provisions of UDO Sec. 8.7.
 15. At least 1 parking space per 500 square feet of building area shall be provided.

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 _____

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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