

STATEMENT OF TOWN COUNCIL AND ORDINANCE AMENDING THE OFFICIAL ZONING DISTRICT MAP OF THE TOWN OF APEX TO CHANGE THE ZONING OF APPROXIMATELY 4.55 ACRES LOCATED AT 0 US HIGHWAY 64 WEST FROM RURAL RESIDENTIAL (RR) TO TECH/FLEX-CONDITIONAL ZONING (TF-CZ)

#23CZ02

WHEREAS, Peak Engineering & Design, PLLC, owner/applicant (the “Applicant”), submitted a completed application for a conditional zoning on the 1st day of February 2023 (the “Application”). The proposed conditional zoning is designated #23CZ02;

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 #23CZ02 before the Planning Board on the 10th day of April 2023;

WHEREAS, the Apex Planning Board held a public hearing on the 10th day of April 2023, gathered facts, received public comments and formulated a recommendation regarding the application for conditional zoning #23CZ02. A motion was made by the Apex Planning Board to recommend approval; the motion passed unanimously for the application for #23CZ02;

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 #23CZ02 before the Apex Town Council on the 25th day of April 2023;

WHEREAS, the Apex Town Council held a public hearing on the 25th day of April 2023. 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 #23CZ02 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: High Density Residential/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 permit additional non-residential uses that are compatible with the surrounding properties, implement stricter environmental conditions than the UDO requires, and allow the property to be developed in conjunction with the property to the north. The rezoning will encourage compatible development of the property and increase the tax base; and

WHEREAS, the Apex Town Council by a vote of 3 to 1 approved Application #23CZ02 rezoning the subject tract located at 0 US Highway 64 West from Rural Residential (RR) to Tech/Flex-Conditional Zoning (TF-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.”

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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 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. Security or Caretaker quarters
2. Day care facility
3. Drop-in or short- term day care
4. Government service
5. Veterinary clinic or hospital
6. Vocational school
7. Utility, minor
8. Wireless support structure
9. Wireless communication facility
10. Botanical garden
11. Entertainment, indoor
12. Greenway
13. Park, active
14. Park, passive
15. Youth or day camps
16. Broadcasting station (radio and television)
17. Radio and television recording studio
18. Commissary
19. Restaurant, general
20. Dispatching office
21. Medical or dental office or clinic
22. Medical or dental laboratory
23. Office, business or professional
24. Pilot Plant (S)
25. Publishing office
26. Research facility
27. Artisan Studio
28. Glass sales
29. Grocery, general
30. Grocery, specialty
31. Health/fitness center or spa
32. Kennel
33. Personal service
34. Printing and copying service
35. Real estate sales
36. Repair services, limited
37. Retail sales, bulky goods
38. Retail sales, general (%)
39. Self-service storage
40. Studio for art
41. Tailor shop
42. Upholstery shop
43. Pet services
44. Automotive Accessory Sales and Installation
45. Contractor's office and storage yard
46. Laboratory, industrial research
47. Warehousing, general
48. Woodworking or cabinetmaking
49. Wholesaling distribution center
50. Microbrewery
51. Microdistillery

Zoning Conditions:

1. Non-residential architectural standards:
 - a. The building exterior shall be high quality materials, including but not limited to brick, wood, stacked stone, other native stone, and tinted/textured concrete masonry units.

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- b. EIFS or synthetic stucco shall not be used in the first forty inches (40") above grade.
 - c. The building exterior shall have more than one material color.
 - d. The buildings shall have more than one parapet height.
 - e. 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.
2. A buffer shall not be required along the northern boundary adjacent to PIN 0722-04-7652).
 3. If the uses "Commissary", "Contractor's office and storage yard", and/or "Wholesale distribution center" are proposed within the zoned property, an 8-foot opaque fence shall be installed to provide additional screening of the stored business vehicles from the American Tobacco Trail. This requirement is above and beyond the required buffer along the American Tobacco Trail.
 4. A note shall be added to plans and plats regarding the existing Deck Air Park generally as noted:
"AVIATION NOTICE: Deck Air Park, an active, general aviation airport open to the public, is located within close proximity to the proposed development. The flight path of aircraft landing, taking off, and flying nearby pass directly over this development. The property identified on this plat may 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."
 5. The use "Glass Sales" shall be all indoors except where materials are stored on trucks. Outdoor truck parking for Glass Sales use must be fully screened from any public rights-of-ways.
 6. "Self-service storage" shall be limited to parking, drive aisles, and SCMs on the rezoned parcel.
 7. "Contractor's office and storage yard" shall not permit an outdoor storage yard on the zoned parcel with the exception of any company vehicles stored when not in use.
 8. 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.
 9. 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 with the riparian buffer. The sewer shall be designed to minimize impacts to the riparian buffer.
 10. Plant deciduous shade trees on the southern side of buildings.
 11. Plant evergreen trees as a windbreak on northern side of buildings.
 12. 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.
 13. Of the vegetation used with the development, 75% shall be native species including those planted within the perimeter buffers. Species shall be submitted to the Planning Department in coordination with the Apex Design & Development Manual).
 14. To reduce irrigation requirements, the project shall select and plant only warm season grasses.
 15. A minimum of three (3) hardwood tree species shall be used for the landscaping on site.
 16. A minimum of two (2) Electric Vehicle Charging Stations shall be installed.
 17. Include International Dark Sky Association compliance standards within the design, including:
 - 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.
 18. All non-residential buildings shall provide solar conduit for future installation of rooftop solar panels.

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

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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