

**STATEMENT OF TOWN COUNCIL AND ORDINANCE AMENDING THE OFFICIAL ZONING DISTRICT MAP OF THE TOWN OF APEX TO CHANGE THE ZONING OF APPROXIMATELY 25.39 ACRES LOCATED AT 0 & 0 COUNTY PARK DRIVE FROM WAKE COUNTY HIGHWAY DISTRICT (HD) TO PLANNED COMMERCIAL-CONDITIONAL ZONING (PC-CZ)**

**#24CZ03**

**WHEREAS**, Matthew Carpenter of Parker Poe, owner/applicant (the “Applicant”), submitted a completed application for a conditional zoning on the 1<sup>st</sup> day of February 2024 (the “Application”). The proposed conditional zoning is designated #24CZ03.

**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 #24CZ03 before the Planning Board on the 13<sup>th</sup> day of May 2024;

**WHEREAS**, the Apex Planning Board held a public hearing on the 13<sup>th</sup> day of May 2024, gathered facts, received public comments and formulated a recommendation regarding the application for conditional zoning #24CZ03. A motion was made by the Apex Planning Board to recommend denial; the motion passed unanimously for the application for #24CZ03;

**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 #24CZ03 before the Apex Town Council on the 28<sup>th</sup> day of May 2024;

**WHEREAS**, the Apex Town Council held a public hearing on the 28<sup>th</sup> day of May 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 #24CZ03 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 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: The rezoning will permit the construction of office and commercial uses needed to support the growing residential development in this area and will make needed off-site improvements to Church Road. The rezoning will encourage compatible development of the property and increase the tax base.

**WHEREAS**, the Apex Town Council by a vote of \_\_\_\_ to \_\_\_\_ approved Application #24CZ03 rezoning the subject tract located at 0 & 0 County Park Dr from Wake County Highway District (HD) to Planned Commercial-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.”

## Ordinance Amending the Official Zoning District Map #24CZ03

**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 Wake County Highway District (HD) to Planned Commercial-Conditional Zoning (PC-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. Health/fitness center or spa        | 17. Medical or dental laboratory     |
| 2. Assembly hall, nonprofit            | 18. Office, business or professional |
| 3. Assembly hall, for-profit           | 19. Book store                       |
| 4. Church or place of worship          | 20. Convenience store                |
| 5. Day care facility                   | 21. Financial institution            |
| 6. Government service                  | 22. Floral shop                      |
| 7. Veterinary clinic or hospital       | 23. Grocery, specialty               |
| 8. Botanical garden                    | 24. Grocery, general                 |
| 9. Entertainment, indoor               | 25. Newsstand or gift shop           |
| 10. Entertainment, outdoor             | 26. Personal service                 |
| 11. Greenway                           | 27. Pharmacy                         |
| 12. Park, active                       | 28. Printing and copying service     |
| 13. Park, passive                      | 29. Real estate sales                |
| 14. Youth or day camps                 | 30. Retail sales, general            |
| 15. Restaurant, general                | 31. Studio for art                   |
| 16. Medical or dental office or clinic | 32. Tailor shop                      |

### Proposed Conditions:

1. The following architectural conditions shall apply to development on the property:
  - a. Each building exterior shall have more than one material and/or color.
  - b. The predominant exterior building materials shall be high quality materials, including, but not limited to:
    - i. Brick masonry
    - ii. Decorative concrete block
    - iii. Stone accents
    - iv. Aluminum storefronts with anodized or pre-finished colors
    - v. EIFS cornices and parapet trim
    - vi. Precast concrete
    - vii. Fiber-reinforced concrete (FRC)

## Ordinance Amending the Official Zoning District Map #24CZ03

- c. 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.
  - d. Each building shall have more than one parapet height.
  - e. The main entrance to each building shall be emphasized.
2. The project 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.
3. At least 75% of plants shall be native or nativar of North Carolina. Landscaping will be coordinated with and approved by the Planning Department at site or subdivision review. No invasive species shall be permitted and no single species of tree or shrub shall constitute more than 20% of the plant material of its type within the development.
4. No clearing or land disturbance shall be permitted within the riparian buffer, except the minimum necessary to install required sewer infrastructure and SCM outlets and construct a stream crossing for the site driveway.
5. The correlated color temperature (CCT) of lamps in exterior lighting shall not exceed 3,000 Kelvins. Athletic field lighting shall be exempt from this requirement.
6. To reduce irrigation requirements, the project shall select and plant only warm season grasses. This condition shall not apply to athletic and other recreational fields.
7. Development shall meet all stormwater reduction requirements listed in the UDO, including limiting the post-development stormwater flows to not exceed the predevelopment rates. In addition, the post-development peak runoff rate shall be limited to the pre-development peak runoff rate for the 2-year, 24-hour, the 10-year, 24-hour, and the 25-year, 24-hour storm events.
8. Development of the property shall include the below transportation infrastructure improvements, all of which are subject to both Apex and NCDOT review and approval.
  - a. New Hill Holleman Road. Developer shall dedicate right of way 55 feet from the existing centerline and widen New Hill Holleman Road for the length of the property's New Hill Holleman Road frontage consistent with the Town's adopted Transportation Plan and typical section for a four-lane, median-divided thoroughfare, but without construction of a median (the "New Hill Holleman Road Improvements"). Alternatively, Developer may pay a fee in lieu based on an engineer's estimate for the New Hill Holleman Road Improvements, subject to review and approval by the Director of Transportation and Infrastructure Development.
  - b. Church Road Frontage. Developer shall improve Church Road for the length of the property's Church Road frontage to a 27-foot wide curb and gutter roadway with a 50-foot public right-of-way, and 5-foot sidewalk along the south side of the road.
  - c. Church Road Off-Site. The developer shall improve Church Road from the eastern edge of the property's Church Road frontage to the intersection of New Hill Holleman Road and Church Road to a minimum 20-foot wide roadway with curb and gutter on the south side and a 5-foot wide sidewalk (the "Sidewalk"), marked centerline, and edge lines, and an eastbound left turn lane with 75 feet of storage at the intersection with New Hill Holleman Road as shown in the attached **Exhibit A** (the "Cross Section"). If the Sidewalk requires easements and/or rights of way over/from properties on Church Road that the developer does not own or control (the "Easements"), developer shall make good faith efforts to acquire the Easements through private negotiation. If developer is unable to acquire one or more Easements necessary to construct the Sidewalk, developer shall pay a fee in lieu for the portion of the Sidewalk that cannot be completed due to the Easement(s) that cannot be acquired, based on an engineer's estimate and third-party appraisal for the cost of

**Ordinance Amending the Official Zoning District Map #24CZ03**

easement acquisition to be submitted to the Town for review and approval. The Director of Transportation and Infrastructure Development may administratively approve modifications to dimensions and design elements of the Cross Section.

- d. Traffic Signal. Prior to issuance of a certificate of occupancy, developer shall post a performance bond (the "Bond") for the cost of the design and construction of a wood pole traffic signal at the existing intersection of New Hill Holleman Road, Church Road, and the New Hill Community Center driveway (the "Signal"). No later than a year following issuance of a certificate of occupancy, developer shall perform a warrant study, and if approved by NCDOT and not already committed and funded by others, design and construct the Signal. If NCDOT does not approve the Signal, the Bond shall be refunded to developer and developer shall have no further obligations under this condition.

**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