

STATEMENT OF TOWN COUNCIL AND ORDINANCE AMENDING THE OFFICIAL ZONING DISTRICT MAP OF THE TOWN OF APEX TO CHANGE THE ZONING OF APPROXIMATELY 19.25 ACRES LOCATED AT 9551 & 9613 HORTON ROAD FROM RURAL RESIDENTIAL (RR) AND WAKE COUNTY R-80W TO RURAL RESIDENTIAL-CONDITIONAL ZONING (RR-CZ).

#23CZ18

WHEREAS, Friendly Capital, LLC., owner/applicant (the “Applicant”), submitted a completed application for a conditional zoning on the 1st day of September 2023 (the “Application”). The proposed conditional zoning is designated #23CZ18;

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 #23CZ18 before the Planning Board on the 13th day of November 2023;

WHEREAS, the Apex Planning Board held a public hearing on the 13th day of November 2023, gathered facts, received public comments and formulated a recommendation regarding the application for conditional zoning #23CZ18. A motion was made by the Apex Planning Board to recommend approval; the motion passed unanimously for the application for #23CZ18;

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 #23CZ18 before the Apex Town Council on the 28th day of November 2023;

WHEREAS, the Apex Town Council held a public hearing on the 28th day of November 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 #23CZ18 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 not consistent with the 2045 Land Use Plan and other adopted plans in that: the 2045 Land Use Map designates this area as Rural Density Residential and approval of this rezoning will automatically amend the 2045 Land Use Map to Rural Transition Residential. This designation on the 2045 Land Use Map includes the zoning district Rural Residential-Conditional Zoning (RR-CZ) and the Apex Town Council has further considered that the proposed rezoning to Rural Residential-Conditional Zoning (RR-CZ) will provide a transition between the development in the Low Density Residential classified areas to the east (Jordan Pointe) and south (Gracewood) and the Rural Density Residential and Protected Open Space classified areas to the west;

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 single-family development at a maximum density of 1 dwelling unit per acre, while also implementing stricter environmental conditions than the UDO requires, providing a 200-foot undisturbed buffer adjacent to the US Army Corps land, providing a variable width buffer adjacent to the large lot single-family on the west, and improving this section of Horton Road; and

WHEREAS, the Apex Town Council by a vote of ____ to ____ approved Application #23CZ18 rezoning the subject tract located at 9551 & 9613 Horton Road from Rural Residential (RR) and Wake County R-80W to Rural Residential-Conditional Zoning (RR-CZ).

Ordinance Amending the Official Zoning District Map #23CZ18

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) and Wake County R-80W to Rural Residential-Conditional Zoning (RR-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. Single-family | 4. Greenway |
| 2. Accessory apartment | 5. Park, active |
| 3. Utility, minor | 6. Park, passive |

Zoning Conditions:

Architectural Conditions:

1. Vinyl siding is not permitted; however, vinyl windows, decorative elements and trim are permitted.
2. Eaves shall project at least 12 inches from the wall of the structure.
3. Garage doors shall have windows, decorative details or carriage-style adornments on them.
4. Garages on the front façade of a home that faces the street shall not exceed 40% of the total width of the house and garage together.
5. The visible side of a home on a corner lot facing the public street shall contain at least 3 decorative elements such as, but not limited to, the following elements:

• Windows	• Decorative shake
• Bay window	• Decorative air vents on gable
• Recessed window	• Decorative gable
• Decorative window	• Decorative cornice
• Trim around the windows	• Column
• Wrap around porch or side porch	• Portico
• Two or more building materials	• Balcony
• Decorative brick/stone	• Dormer
• Decorative trim	

Ordinance Amending the Official Zoning District Map #23CZ18

6. A varied color palette shall be utilized 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.
7. The rear and side elevations of the units that can be seen from the right-of-way shall have trim around the windows.
8. Front porches shall be a minimum of 6 feet deep.

Additional Conditions:

1. This development shall provide a gross maximum density of 1.0 units per acre (including open space and R/W).
2. This project shall be stage graded per UDO Sec. 7.2.5.C.
3. The maximum built-upon area for this development shall be 60%, the maximum height shall be 40 ft, and the minimum building setbacks shall be as follows:
 - (a) Front – 25 ft; (b) Side – 8 ft. min/20 ft. total; (c) Corner side – 15 ft; (d) Rear – 25 ft.
4. For stormwater management, post-development peak runoff shall not exceed pre-development peak runoff conditions for the 1-year, 10-year, and 25-year 24-hour storm events.
5. Signage shall be provided in HOA areas surrounding SCMs, regarding the need to eliminate and reduce fertilizer and pet waste near SCMs.
6. Developer shall install pollinator-friendly and native flora within SCM planting areas.
7. At least 75% of the plant species used in the landscape design shall be native species.
8. A minimum of one pet waste station shall be installed in HOA common area.
9. All homes shall include solar conduit in the building design to facilitate future rooftop solar installations. The developer shall emphasize the availability of solar by providing the statement “Solar Options Available” on the development sign at the front of the subdivision.
10. All garages shall be wired with a 220-volt outlet inside the garage to facilitate charging of electronic vehicles.
11. A variable width landscape buffer shall be provided along the western boundary, with the widths and types defined as follows:
 - 20’ undisturbed buffer from Horton Road to a point 320’ south of Horton Road.
 - 40’ undisturbed buffer from that point 320’ south of Horton Road to a point 450’ south of Horton Road.
 - 75’ undisturbed buffer from that point 450’ south of Horton Road to the southernmost extent of the western boundary.
12. A 200’ minimum undisturbed buffer shall be provided along the USACE property to the southwest. In addition, any proposed residential lots shall be no less than 400’ from the USACE property.
13. While this low-density development would otherwise be exempt from the RCA requirements established in UDO Sec. 8.1.2.C, this project shall provide buffers and RCA equal to or greater than 25% of the gross site acreage.
14. Native pollinator gardens, rain gardens, or “Piedmont Prairies” shall be planted within the footprint of the existing pond once it is drained, not including any area used for stormwater control measures or area within proposed residential lots. A farm-style split rail fence shall be installed between these gardens and any adjoining residential lots.
15. To reduce irrigation, HOA covenants shall not prohibit clover lawns or warm season grasses throughout the neighborhood.
16. To support wildlife and pollinators, HOA covenants shall not require that fallen leaves or dormant plants be removed during the winter on areas without turf grass, including individual homes and HOA owned common areas.
17. HOA covenants shall prohibit mosquito fogging within the neighborhood.
18. HOA covenants shall not restrict the construction of accessory dwelling units.

Ordinance Amending the Official Zoning District Map #23CZ18

19. Developer shall improve Horton Road along the property frontage to ½ of a 24-foot edge-to-edge roadway typical section within the existing 60-foot public right of way. The typical pavement section shall include 10-foot travel lanes and 2-foot paved shoulders, plus a 5-foot wide concrete sidewalk at the back of ditch. Horton Road shall meet the minimum geometric standards of a Town of Apex Residential street, having a 25-mph minimum design speed and a minimum horizontal curve radius of 198’.

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 _____ 2023.

TOWN OF APEX

Jacques K. Gilbert
Mayor

ATTEST:

Allen Coleman, CMC, NCCCC
Town Clerk

APPROVED AS TO FORM:

Town Attorney