

STATEMENT OF TOWN COUNCIL AND ORDINANCE AMENDING THE OFFICIAL ZONING DISTRICT MAP OF THE TOWN OF APEX TO CHANGE THE ZONING OF APPROXIMATELY 36.54 ACRES LOCATED AT 433 NEW HILL OLIVE CHAPEL ROAD, 0, 1310, 1311, 1314, 1315, 1318, 1319, 1322, 1323, 1328, 1332, 1336, 1340, 1346, 1350, 1354, 1358, 1362, 1366, 1361, 1357, 1353, 1349, 1345, 1341, 1335, & 1329 MASCOMA Drive, 1212, 1220, 1216, 1208, 1204, 1201, 1205, & 1209 BLUE MIST COURT, 0, 0, 0, 3528, 3524, 3520, 3516, 3512, 3508, 3504, 3525, 3521, 3517, & 3500 OLIVE GLEN DRIVE, & 0, 0, & 3510 TUFTONBORO LANE FROM PLANNED UNIT DEVELOPMENT-CONDITIONAL ZONING (PUD-CZ #18CZ12) TO PLANNED UNIT DEVELOPMENT-CONDITIONAL ZONING (PUD-CZ)

#21CZ28

WHEREAS, Toll Southeast LP Company, LLC., owner/applicant (the “Applicant”), submitted a completed application for a conditional zoning on the 1st day of October 2021 (the “Application”). The proposed conditional zoning is designated #21CZ28;

WHEREAS, the Director of Planning and Community Development for the Town of Apex, Dianne Khin, caused proper notice to be given (by publication and posting) of a public hearing on #21CZ28 before the Planning Board on the 10th day of January 2022;

WHEREAS, the Apex Planning Board held a public hearing on the 10th day of January 2022, gathered facts, received public comments and formulated a recommendation regarding the application for conditional zoning #21CZ28. A motion was made by the Apex Planning Board to recommend approval; the motion passed unanimously for the application for #21CZ28;

WHEREAS, pursuant to N.C.G.S. §160D-601 and Sec. 2.2.11.E of the Unified Development Ordinance, the Director of Planning and Community Development caused proper notice to be given (by publication and posting), of a public hearing on #21CZ28 before the Apex Town Council on the 25th day of January 2022;

WHEREAS, the Apex Town Council held a public hearing on the 25th day of January 2022. Amanda Bunce, Current Planning Manager, presented the Planning Board's recommendation at the public hearing;

WHEREAS, all persons who desired to present information relevant to the application for #21CZ28 and who were residents of Apex or its extraterritorial jurisdiction, or who owned property adjoining the property for which the conditional zoning is sought, 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 Low Density Residential. This designation on the 2045 Land Use Map includes the zoning district Planned Unit Development-Conditional Zoning (PUD-CZ) and the Apex Town Council has further considered that the proposed rezoning to Planned Unit Development-Conditional Zoning (PUD-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 provide a recreation area more appropriate for an age-restricted community and resolve the issue with the architectural standard created by the building permit issued in error; and

WHEREAS, the Apex Town Council by a vote of 5 to 0 approved Application #21CZ28 rezoning the subject tract located at 433 New Hill Olive Chapel Road, 0, 1310, 1311, 1314, 1315, 1318, 1319, 1322, 1323, 1328, 1332, 1336, 1340, 1346, 1350, 1354, 1358, 1362, 1366, 1361, 1357, 1353, 1349, 1345, 1341, 1335, & 1329 Mascoma Drive, 1212, 1220, 1216, 1208, 1204, 1201, 1205, & 1209 Blue Mist Court, 0, 0, 0, 3528, 3524, 3520, 3516, 3512, 3508, 3504, 3525, 3521, 3517, & 3500 Olive Glen Drive, & 0, 0, & 3510 Tuftonboro Lane from Planned Unit Development-Conditional Zoning (PUD-CZ #18CZ12) to Planned Unit Development-Conditional Zoning (PUD-CZ).

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF APEX

Ordinance Amending the Official Zoning District Map #21CZ28

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 Planned Unit Development-Conditional Zoning (PUD-CZ #18CZ12) to Planned Unit Development-Conditional Zoning (PUD-CZ) District, subject to the conditions stated herein.

Section 3: The Director of Planning and Community Development 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 the conditions in Attachment "B" Cedar Crossing PUD Amendment which are imposed as part of this rezoning.

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 _____ 2022.

TOWN OF APEX

Mayor

ATTEST:

Title: _____

APPROVED AS TO FORM:

Town Attorney

AFFIDAVIT OF OWNERSHIP: EXHIBIT A – LEGAL DESCRIPTION

Application #:

21CZ28

Submittal Date:

10/1/2021

Insert legal description below.

Beginning at point on the Eastern R/W of New Hill Olive Chapel Rd. (NCSR 1141) said point having N.C. grid coordinates of N=722, 750.40' & E= 2,015,345.55' (NAD 1983/2011); Thence runs S 87-05'9"E 557.15 to an existing iron pipe; thence runs S 87-05'-19"E 1,968.13'to an existing iron pipe; thence runs S 03 50'9"W 691.17'to a 1" iron rod; thence runs N 87-29'-17" W 295.62' to an existing iron pipe; thence runs N 87-11' -53"W 1,288.09' to an existing iron pipe; thence runs N 31-28'-20"W 264.47' to an existing iron pipe; thence runs N 30-09'-25"W 120.72' to an existing iron pipe; thence runs S 74-44'8"W 274.56' to an iron pipe set on the Eastern R/W of New Hill Olive Chapel Rd. Thence runs S 74-44' -08"W 30.01' to a point in the center of said road; thence along the center of the road the following metes and bounds; N 17- 01'-11"W 71.24', N 16-54'-33"W 59.95', N 16-24'-45"W 77.83', N 15-37-49"W 75.88', N 13-54'-11"W 88.47', N 12-22'-56"W 94.89', N 09-54'-29"W 27.08' to a point on the centerline; thence leaving said centerline S 87-05' -19"E 30. 77' to the point and place of beginning. This tract contains 1,591,790 sq. ft. or 36.54 acres all according to a survey by Barry L. Scott, PLS dated 04-19-2018.

Attachment B: Cedar Crossing PUD Amendment



Nil Ghosh | Associate
421 Fayetteville St | Ste 530
Raleigh, NC 27601
919-590-0362
nghosh@morningstarlawgroup.com
www.morningstarlawgroup.com

December 22, 2021

Shelly Mayo
Planner II
Town of Apex

RE: Cedar Crossing PUD Amendment

Dear Shelly Mayo:

This letter is to inform you of the intent of the proposed PUD Amendment for the above-captioned project. The intent of this PUD amendment is to amend Rezoning Case #18CZ12 Olive Glen PUD in the following ways:

- A. Allowing the required play lawn to be developed as an active amenity provided that:
 - a. Mulch walking paths are incorporated into the design of the amenity
 - b. A wildflower garden, community garden, or native pollinator demonstration garden is included within the amenity
 - c. Within the amenity area, the developer shall select and install tree, shrub and perennial species with special attention to providing diverse and abundant pollinator food and host plant sources, including plants that bloom in succession from spring to fall.
 - d. The amenity includes at least one (1) pet waste station
 - e. Any lighting installed within the amenity area shall use full cutoff LED fixtures that have a maximum color temperature of 3000K and include light timers, motion sensors, or other smart lighting technology.
 - f. No additional parking shall be required for the proposed amenity courts. The parking spaces at the mail kiosk may be used to access the proposed courts.
- B. A change to the timing of greenway construction in Section 12:
 - a. All approved public greenway trails must be completed at the point that ~~twenty five percent (25%)~~ fifty percent (50%) of the building permits for the total number of residential units in the Olive Glen PUD have been issued.
- C. A change to the architectural conditions contained in Section 7 of the PUD but only modified for Lot 37 (1353 Mascoma Drive) of the subdivision:
 - a. The garage cannot protrude more than 1 foot out from the front façade or front porch, except with respect to Lot 37 (Wake County PIN 0712-62-4275, 1353 Mascoma Drive) which shall not protrude more than 5 feet out from the front façade or front porch.

No further changes are proposed. This encompasses the entire scope of the proposed amendment.

Respectfully,

Nil Ghosh | Associate
Morningstar Law Group