

## **ORDINANCE A**

(Approving the Conditional Zoning Application)

### **AN ORDINANCE AMENDING THE CHAPEL HILL ZONING ATLAS TO REZONE THE PROPERTY LOCATED AT 1701 MARTIN LUTHER KING JR BLVD FROM MIXED USE-VILLAGE (MU-V) AND RESIDENTIAL-2 (R-2) TO MIXED USE-VILLAGE-CONDITIONAL ZONING DISTRICT (MU-V-CZD) (PROJECT #CZD-25-1)(20[YR-MO-DAY]/O-#)**

WHEREAS, the Council of the Town of Chapel Hill has considered the application for Conditional Zoning submitted by Zimmer Development Company, on behalf of property owner Chapel Hill Housing LLC, to rezone a 10.06-acre parcel located at 1671, 1673, 1675, 1677, 1679, 1681, 1683, 1685, 1687, 1691, 1701, 1711, and 1751 Martin Luther King Jr Blvd, on property identified as Orange County Property Identifier Number 9880-25-4306, to allow development of additional multifamily units and finds that the amendment to the Zoning Atlas is:

- Consistent with the Town's Comprehensive Plan, per NCGS 160D-605; and
- Reasonable and in the public's interest, per NCGS 160D-605;
- Warranted to achieve the purposes of the Comprehensive Plan, per Land Use Management Ordinance (LUMO) 4.4

WHEREAS, the application, if rezoned according to the conditions listed below would, per LUMO 4.4.3(f):

- 1) Conform with the applicable provisions of the LUMO and Town Code
- 2) Conform with the Comprehensive Plan
- 3) Be compatible with adjoining uses
- 4) Mitigate impacts on surrounding properties and the Town as a whole
- 5) Be harmonious with existing and proposed built systems including utility infrastructure, transportation facilities, police and fire coverage, and other public services and facilities
- 6) Be harmonious with natural systems such as hydrology, topography, and other environmental constraints

### **MODIFICATIONS TO REGULATIONS**

WHEREAS, the Council of the Town of Chapel Hill finds, in this particular case, that the proposed development with the following requested modifications to regulations satisfies public purposes to an equivalent or greater degree:

- 1) LUMO Section 3.4.6(c): Land use categories for the Mixed-Use Village-Conditional Zoning District.** Waive the required minimum floor area for land uses. A mixture of office, commercial, and residential uses are permitted in any proportion.

This finding is based on a determination that the public purposes are satisfied to an equivalent or greater degree because the modification supports the development in meeting goals of the Comprehensive Plan such as responding to housing needs, while taking into account market conditions.

- 2) LUMO Section 5.6.2: Buffers required.** Modify the landscape buffer requirements at the perimeter of the site as described below. Modified buffers shall not be eligible

for consideration of an Alternative Buffer request.

- a. Reduce the minimum width of the eastern buffer (Martin Luther King Jr. Boulevard frontage) to 15 feet, measured outside of rights-of-ways and utility easements, for approximately 200 linear feet of frontage along Building A and the courtyard area.
- b. Permit the eastern buffer in front of the retained 48" dbh Willow Oak Tree, for approximately 120 feet immediately south of Building A, to be developed with less than the required amount of buffer plantings in order to provide visual access to this preserved tree and to reduce impacts to the tree's root system. At such time as removal of the Willow Oak Tree is necessary due to death or decline, this modification to regulation shall be void and the developer shall install new plantings to comply with LUMO requirements.
- c. Reduce the minimum planting requirements for the northern buffer to allow 15 percent fewer canopy trees and 30 percent fewer understory trees as compared to Design Manual specifications.
- d. Waive the requirement for a buffer along the southern property line.

This finding is based on a determination that the public purposes are satisfied to an equivalent or greater degree because the modifications maintain opportunities for new plant material while addressing site constraints, building activation of streets, and mature tree preservation.

**3) LUMO Section 5.9.6(c)(1)A: Foundation Buffer Strip.** Reduce the circumstances requiring a landscaped buffer strip that separates surface parking lots from structures. The landscaped buffer strip shall only be required between parking spaces and buildings located within the central parking area adjacent to Buildings A and B.

This finding is based on a determination that the public purposes are satisfied to an equivalent or greater degree because more robust plant material and tree preservation is provided elsewhere on the site.

## **CONDITIONAL ZONING DISTRICT**

NOW, THEREFORE, BE IT ORDAINED by the Council of the Town of Chapel Hill that the Council finds, in this particular case, the proposed rezoning with the following uses, subject to the conditions below, satisfies the intent and purposes of the Mixed Use-Village – Conditional Zoning District (MU-V-CZD).

BE IT FURTHER ORDAINED by the Council of the Town of Chapel Hill that the Chapel Hill Zoning Atlas be amended as follows:

### **SECTION I**

The following Orange County parcel(s) identified by Parcel Identifier Number (PIN) 9880-25-4306, described below, along with the area extending to the centerline of the adjoining Martin Luther King Jr. Blvd. right-of-way, shall be rezoned to Mixed Use-Village-Conditional Zoning District (MU-V-CZD):

Being all of Lot 1 containing 9.24 acres more or less as shown on plat entitled "Final Recombination Plat WCA Partners, LLC" by Ballentine Associates, PA, dated December 09, 2013, recorded in Plat book 112 page 121 in the Orange County Registry.

## **SECTION II**

BE IT FURTHER ORDAINED by the Council of the Town of Chapel Hill that the following conditions are hereby incorporated by reference:

1. Expiration of Conditional Zoning Atlas Amendment: An application for Zoning Compliance Permit must be filed by a date precisely 2 years from the date of this approval or the land shall revert to its previous zoning designation. [LUMO 4.4.7(f)]
  - a. A Zoning Compliance Permit must be issued to verify compliance with this Conditional Zoning ordinance, prior to establishing dwelling units at any new location within the site.
2. Consent to Conditions: This approval is not effective until the property owner(s) provides written consent to the approval. Written consent must be provided within ten (10) business days of enactment by the Town Council.
3. Land Use Intensity: This Conditional Zoning Atlas Amendment authorizes the following:

<b>Land Use Intensity</b>	
Permitted Uses	All Residential and Non-Residential uses permitted under MU-V-CZD zoning  Customary accessory uses
Net Land Area (NLA)	Approximately 398,772 sq. ft.
Gross Land Area (GLA)	Approximately 438,649.2 sq. ft.
Maximum Floor Area	200,000 sq. ft.
Permitted Dwelling Units	154 to 160 total units
Dimensional Regulations	Townhome-style units: Maximum Height – 29 ft Minimum Setback from western property line – 85 ft Building J: Maximum Height – 66 ft Other dimensional regulations per LUMO
Minimum Affordable Units	See Affordable Housing Plan
Minimum and Maximum Vehicular Parking	Per LUMO
Minimum Electric Vehicular (EV) Parking	6 EVSE-capable parking spaces
Minimum Bicycle Parking	62 spaces
Maximum Total Impervious Surface	Per LUMO (70% of GLA)
Resource Conservation District Maximum Land Disturbance	Per LUMO
Steep Slopes Maximum Land Disturbance	Per LUMO
Minimum Tree Canopy Coverage	Per LUMO
Minimum Recreation Area	Satisfied by payment made in 2015

4. Modifications to Land Use Intensity: This approval establishes minimums and maximums as indicated in the above Land Use Intensity Table. These amounts apply to the entire project site, including areas within the Resource Conservation District (RCD) and areas containing steep slopes. These amounts may be modified according to the criteria and procedures established in LUMO 4.4.7(h). Additional modifications to amounts in the Land Use Intensity table shall be considered as follows:
  - a. A change in the net land area or gross land area shall constitute a minor modification, provided the land area is established by a survey or legal description, and provided there is no resulting change to the zoning district boundary approved by the Town Council.
  - b. Relocation of structures to within fifty (50) feet of exterior property lines, or construction of new structures within (50) feet of exterior property lines, shall constitute a major modification. Notwithstanding, enlargement of structures already located within fifty (50) feet of exterior property lines as of the date of this ordinance shall constitute a minor modification provided such enlargements do not exceed the limits established in LUMO 4.4.7(h)(2).
5. Drive-Through Facilities: Drive-in windows are a prohibited use and shall not be established accessory to any permitted use.
6. Consent Judgment: The provisions of the Consent Judgment ordered by North Carolina Superior Court on October 18, 2013, agreed to and accepted by the Town of Chapel Hill, WCA Partners, LLC, and Petitioners, shall remain in effect and are part of this approval. The provisions that will continue to affect the development and ongoing use of the site include, but are not limited to:
  - a. Stormwater facility location, design, intent, and ongoing maintenance responsibility, per Consent Judgment (CJ) provision 1b.
  - b. Maximum height of 29 ft and minimum setback of 85 ft for townhome-style units (CJ provision 1c.)
  - c. Maximum height of 66 ft for Building J (CJ provision 1d.)
  - d. Construction hour limitations and light spillover protection (CJ provision 1e.)
    - i. 8:00 AM to 7:00 PM Monday-Friday
    - ii. 10:00 AM to 7:00 PM Saturdays
    - iii. No construction on Sundays or Federal Holidays
  - e. Penalty for specimen trees killed as a result of construction activities, payable to the Town (CJ provision 1g.)
  - f. Required undisturbed buffer along the western property line, with variable established widths and permitted activities within the buffer (CJ provision 1h.)
  - g. Evergreen plantings included in the buffer adjoining the lot with address 115 Tremont Circle, provided no damage will result to specimen trees (CJ provision 1i.)
  - h. Supplementary evergreen plantings included in the buffer adjoining all lots fronting on Tremont Circle and Weymouth Place, where feasible and subject to limitations described therein (CJ provision 1j.)
  - i. Penalties to General Contractor for any disruptions to electricity/cable/phone and other utility lines during construction (CJ provision 1m.)
  - j. Communication with neighbors and work with the neighborhood advisory group (CJ provision 1n.)
7. Intermittent Stream: The stream classifications applicable to the site, along with the resulting required riparian buffer widths, shall be considered vested under the Stream Determination dated November 23, 2009, provided by the Town Engineering Department. No further field verification shall be required since this Stream Determination informed the previous approval under which this site was developed.

### Affordable Housing

8. Affordable Housing Plan: The developer shall provide the following:
  - a. Affordable Units: The minimum number of affordable units shall be 6 units.
  - b. Unit Size: The affordable units will include 1-bedroom units or larger.
  - c. Location: The affordable units may be provided at any location in the community.
  - d. Pricing: All of the affordable units will be reserved for those households earning 60 percent or less of the area median income (AMI).
    - i. AMI will be based on income data published annually by the U.S. Department of Housing and Urban Development for the Durham-Chapel Hill Metropolitan Statistical Area and/or the Durham-Chapel Hill, NC HUD Metro Fair Market Rent Area.
    - ii. Maximum pricing for rental units shall be calculated based on 30 percent of monthly household income at the specified AMI levels, minus housing-related utilities (heat, water, sewer, electric, and gas) and fees required by the owner or property manager. AMI shall be calculated assuming 1 person for efficiencies and 1.5 persons per bedroom for all other unit sizes.
  - e. Phasing:
    - i. All of the affordable units shall be completed prior to the Zoning Final Inspection for work establishing new dwelling units.
  - f. Affordability Period: Affordable units offered for rent will be affordable for a period of at least thirty (30) years from the receipt of a Certificate of Occupancy.
  - g. Design:
    - i. The affordable units will be finished with similar exterior design, trim, materials, and details as the market rate homes.
    - ii. The affordable units will meet the same energy efficiency standards as the market rate homes.
9. Affordable Housing Performance Agreement: Prior to the issuance of a Zoning Compliance Permit for any work establishing new dwelling units, a performance agreement that incorporates the approved Affordable Housing Plan (see above) must be executed by the developer, the Town Manager (or designee), and if applicable, the non-profit agency that will administer the affordable units.
10. Conversion From Rental Residential Community to Ownership Condominium Community: If the rental development is converted to an ownership condominium development, the developer shall propose a plan demonstrating compliance with LUMO 3.10 Inclusionary Zoning.
  - a. An associated Affordable Housing Plan shall be approved by the Town Manager prior to recordation of the condominium plat.
  - b. The Town Council hereby approves a payment-in-lieu of housing as provided in LUMO 3.10.3(d)(4). The developer may demonstrate compliance by providing affordable units, providing a payment-in-lieu, or a combination thereof. The developer shall provide any payment to the Town prior to recordation of the condominium plat.

### Transportation, Access, and Connectivity

11. Transportation Management Plan: Prior to issuance of a Zoning Compliance Permit for establishing any nonresidential uses within the site, the developer shall submit a Transportation Management Plan, subject to Town Manager approval.

12. Traffic Signs: The developer shall be responsible for placement and maintenance of temporary regulatory signs before approval of a Zoning Final Inspection.
13. Trip Generation: The Traffic Impact Analysis (TIA) Exemption for this development was issued on January 31, 2025. The developer shall request an updated TIA and apply for a major modification to this Conditional Zoning if the proposed cumulative total daily vehicle trips exceed a 10 percent increase from the amount established by the TIA Exemption.
14. Pavement Markings: Any pavement markings proposed within the public street rights-of-way shall be long life thermoplastic. Pavement markers shall be installed if they previously existing on the roadways.
15. Fire Apparatus Access for Chapel Hill Fire Department: All fire department access determinations shall be based upon Chapel Hill Fire Department apparatus specifications (data specifications provided by Office of the Fire Marshal/Life Safety Division) and field verification. All proposed fire department access designs shall be reviewed and shall also pass field inspection.
16. Bicycle Parking: The three bicycle parking spaces added to serve new dwelling units must comply with the Spring 2015 Association of Pedestrian and Bicycle Professionals Guidelines.

#### Sustainability

17. Electric Vehicle Infrastructure: The developer shall ensure that their facilities support the use of current and future levels of electric vehicles by their residents and visitors by supplying the following, consistent with Town Council policy:
  - a. A minimum of 6 EVSE-Capable parking spaces shall be provided. EVSE-Capable means that a continuous raceway or conduit has been installed connecting a parking space to an electrical panel or a space reserved for a future electrical panel.
  - b. All initial and future EV charging designs should ensure that each EVSE-equipped parking space is capable of providing at least 6.6 kW. Designs must also adhere to U.S. Access Board's most recently updated version of the Design Recommendations for Accessible Electric Vehicle Charging Stations.
18. Climate Action Plan: Prior to issuance of a Zoning Compliance Permit for any work establishing new dwelling units, the developer shall submit a Climate Action Plan on the appropriate form prescribed by the Town Manager that includes, at a minimum, the following climate action commitments for the new units:
  - a. Methods and timeframe for meeting conditions for Electric Vehicle Infrastructure
  - b. All-electric building and site design
  - c. All-electric appliances (no fossil fuel appliances)
  - d. LED lighting only for interior spaces
  - e. WaterSense-rated appliances and equipment only
  - f. Energy Star-rated appliances and equipment only

### Homeowner Association

19. Applicability: The Homeowner Association conditions shall apply for development with individual ownership. Should a development add for-sale units or convert rental units to ownership, the following conditions shall apply.
20. Homeowners' Association: A Homeowners' Association shall be created that has the capacity to place a lien on the property of a member who does not pay the annual charges for maintenance of all common areas, however designated. The Homeowners' Association documents shall be approved by the Town Manager prior to recordation at the Orange County Register of Deeds Office and shall be cross-referenced on the final plat. The Homeowners' Association documents shall comply with LUMO 4.6.7. The Homeowners' Association covenants shall not exclude home occupation businesses as regulated by the Town of Chapel Hill.
21. Homeowners' Association Responsibilities: The Homeowners' Association shall be responsible for the maintenance, repair, and operation of required bufferyard(s), open space, recreation areas, paths, community garden, and shared stormwater management facilities.
22. Dedication and Maintenance of Common Area to Homeowners' Association: The developer shall provide for Town Manager review and approval, a deed conveying to the Homeowners' Association all common areas, however designated, including the community garden; recreation space; open space and common areas; the bufferyards; and stormwater management facilities. That the Homeowners' Association shall be responsible for the maintenance of the proposed internal subdivision roads until NCDOT or the Town assumes ownership of the internal streets. These documents shall be reviewed and approved by the Town Manager prior to recordation at the Orange County Register of Deeds Office and cross-referenced on the final plat.
23. Solar Collection Devices: The Homeowners' Association, or similar entity, shall not include covenants or other conditions of sale that restrict or prohibit the use, installation, or maintenance of solar collection devices, including clotheslines.
24. Short-Term Rentals: The Homeowners' Association covenants or other applicable covenants and restrictions shall prohibit dedicated short-term rentals of 30 days or less.

### Miscellaneous

25. Town Design Manual: Except as specified elsewhere in this Ordinance, the developer shall comply with all standards of the Public Works Engineering Design Manual, as applicable to the project.
26. State or Federal Approvals: Any required State or federal approvals, permits, or encroachment agreements, including but not limited to NCDOT approvals and 401/404 permits, shall be approved and copies of the approved permits and agreements be submitted to the Town of Chapel Hill prior to the issuance of a Zoning Compliance Permit.
27. Detailed Plans: Prior to the issuance of a Zoning Compliance Permit, final detailed site plans, grading plans, utility/lighting plans, stormwater management plans (with hydrologic calculations), landscape plans, and landscape maintenance plans shall be

approved by the Town Manager. Such plans shall conform to the district-specific plan approved by this application and demonstrate compliance with all applicable regulations and the design standards of the Chapel Hill Land Use Management Ordinance and the Public Works Engineering Design Manual. [LUMO 4.4.7]

28. Phasing Plan: If phasing of the project is proposed, then the developer shall provide a Phasing Plan as part of the Zoning Compliance Permit. The Phasing Plan also shall detail which public improvements and stormwater management structures will be completed in each phase prior to requesting a Certificate of Occupancy. Construction for any phase shall not begin until all public improvements in previous phases have been completed, and a note to this effect shall be provided on the final plans.
29. Community Design Commission (CDC) Review: The Community Design Commission shall review building elevations and the location and screening of all HVAC equipment prior to issuance of a Zoning Compliance Permit for any work establishing new dwelling units. CDC review is not required for subsequent changes to building elevations or site lighting that do not require a Zoning Compliance Permit.
30. Construction Sign Required: Prior to starting any land-disturbing activity, the developer shall post a construction sign at the development site that lists the property owner's representative and telephone number, the contractor's representative and telephone number, and a telephone number. The construction sign may have a maximum of 32 square feet of display area and maximum height of 8 feet. The sign shall be non-illuminated and shall consist of light letters on a dark background. Prior to the issuance of a Zoning Compliance Permit, a detail of the sign shall be reviewed and approved by the Town Manager. [LUMO 5.14.4]
31. Street Names and Numbers: The development's streets and house/building numbers shall be approved by the Town Manager prior to issuance of a Zoning Compliance Permit for any work establishing new dwelling units.
32. Vested Right: This Conditional Zoning constitutes a site-specific vesting plan (and is defined as such in the Chapel Hill Land Use Management Ordinance) establishing a vested right as provided by N.C.G.S. Section 160D-108.1 and the Chapel Hill Land Use Management Ordinance. During the period of vesting this permit may be subject to subsequent changes to Town regulations to the extent such regulations have been enacted under authority other than the Town's zoning authority.
33. Continued Validity: Continued validity and effectiveness of this approval shall be expressly conditioned on the continued compliance with the plans and conditions listed above.
34. Non-Severability: If any of the above conditions is held to be invalid, approval in its entirety shall be void.
35. Not-Comprehensive: The listing of these specific conditions applicable to this Permit is not intended to be comprehensive and does not exclude other state and local laws and regulations which may be applicable to this Permit and development project.

BE IT FURTHER ORDAINED that the Council hereby approves the application for Conditional Zoning for 1701 North Residential at 1701 Martin Luther King Jr Blvd.

This the []th day of [month], 20[[]].