



Town Council Meeting:

Rewriting Our Rules – A Land Use Management Ordinance (LUMO) Update

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Town Council Meeting Date: May 15, 2024

Overview

During the May 15, 2024, meeting, staff will provide updates and seek Council’s input on the following:

1. By-Right Development

- a. Equity and By-Right Development
- b. Residential Development
- c. Commercial Development

2. Improvement to the Conditional Zoning Process

- a. Why Is a Streamlined Process Needed?
- b. Recommendations for Improving the Process

I. By-Right Development

“By-right” development refers to projects that are permitted through an entirely administrative approval process. This contrasts with projects that require either a Special Use Permit or Conditional Zoning.

Chapel Hill currently limits administrative approvals both explicitly and implicitly. Explicit barriers found in the LUMO include:

- **The “20/40 Rule”:** Based on the “20/40 Rule” almost any development that involves more than 20,000 square feet of floor area or 40,000 square feet of land disturbance must receive either a Special Use Permit or a Conditional Zoning.
- **Requirements for multifamily development over 10 units:** In many of the Town’s high-density zoning districts, multifamily development with more than 10 units is only allowed through a Conditional Zoning.

Implicit barriers to administrative approvals include:

- **Outdated dimensional standards:** In many zoning districts, the Town’s outdated dimensional standards prevent the type and intensity of development called for in the Future Land Use Map (FLUM). The Town’s limits on floor area ratio and height are most commonly at odds with the FLUM. Projects that are not otherwise required to pursue a conditional zoning may still need to do so where these dimensional standards do not reflect modern development patterns.
- **Outdated zoning map:** Many parts of Town that the FLUM designates for high-density residential, commercial, or mixed uses are still zoned exclusively for low-density residential use. Unless the Town proactively rezones these areas, individual rezoning applications will be needed to implement the types of development called for in the FLUM.

This section focuses on how the Town can address explicit barriers to administrative approvals by updating the “20/40 Rule” and adjusting approval thresholds for smaller-scale multifamily developments.

a. Equity and By-Right Development

Expanding opportunities for by-right development can help to promote more equitable outcomes in Chapel Hill. The American Planning Association’s [Equity in Zoning Guide](#)¹ explains that by-right development can help to increase access to economic opportunities for historically marginalized populations by making it easier to find housing and jobs in the same community.

The Guide recommends increasing opportunities for by-right residential and commercial development in appropriate zoning districts.

b. Residential Development

Staff Recommendation: *In appropriate zoning districts, allow residential developments of up to 20 units through administrative approval. Remove the “20/40 Rule” for residential development.*

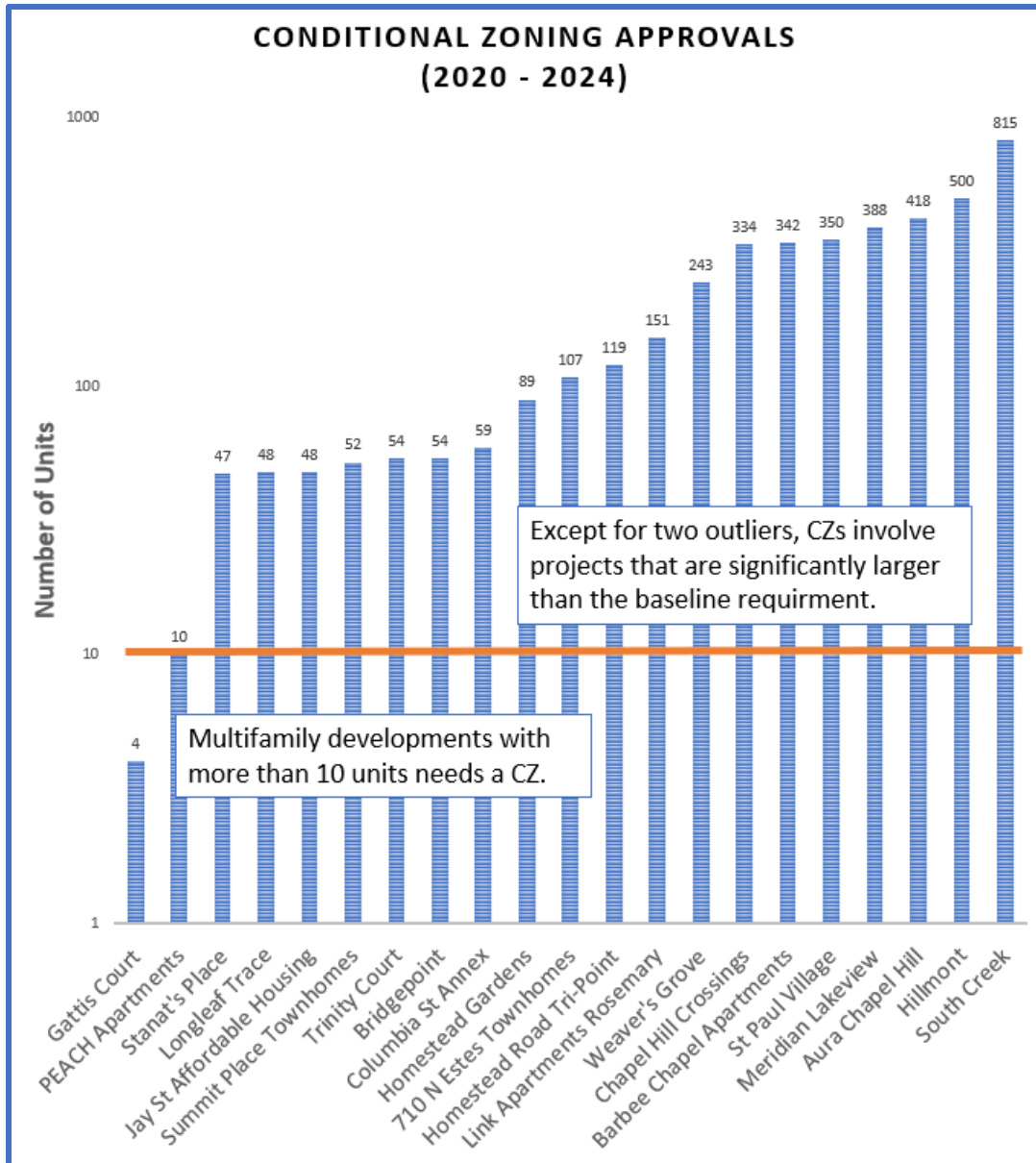
Missing middle housing involves more than duplexes, triplexes, and fourplexes. Medium-sized townhome developments and smaller-scale apartment buildings are also important parts of the missing middle. Allowing administrative approvals of these housing types could help the Town fill its missing middle housing gap and better serve a variety of housing needs.

The Town currently has no residential zoning districts in which more than 10 units can be built through administrative approval. Staff recommend increasing this threshold to 20 units regardless of the amount of floor area or land disturbance associated with the project.

Background:

Typical conditional zoning (CZ) approvals are significantly larger than the minimum requirement. In many of the Town’s high-density zoning districts, multifamily developments with more than 10 units are only allowed through a CZ. However, of the 21 residential CZs approved by Council, **19 have included 47 or more units**. The remaining two CZs (PEACH Apartments with 10 units and Gattis Court with 4 units) were fully affordable projects pursued by EMPOWERMENT and Habitat for Humanity.

¹ <https://www.planning.org/publications/document/9264386/>



This mismatch between when CZs are required and the actual size of approved CZs is problematic. While correlation does not prove causation, it is highly likely that the time, expense, and risk associated with the CZ process are among the factors that discourage smaller-scale developments. Anecdotal evidence supports this link. Town staff have repeatedly heard from the development community that there is interest in building missing middle multifamily developments but that the Town’s approval processes act as barriers.

Impact on Affordable Housing:

Raising the administrative approval threshold from 10 units to 20 units does not necessarily mean that the Town will see fewer affordable units.

As discussed during the April 24, 2024, Council Meeting, many missing middle developments likely cannot afford to provide affordable housing. The cost of providing even a single affordable unit can make a smaller project economically unfeasible. Meanwhile, one

of the most meaningful benefits of the conditional zoning process is the Town's ability to negotiate for affordable housing. There is limited benefit to requiring a conditional zoning for projects that likely cannot afford to provide affordable housing.

Estimated Minimum Units Required to Provide One Affordable Unit	
Rental projects	12 – 16 units
For-sale projects	10 – 12 units

Source: Analysis performed by SB Friedman

The proposed new threshold for administrative approvals is slightly higher than the estimates provided above. Because these estimates are highly dependent on land acquisition costs and other assumptions, it is prudent to include a safe margin of error.

The new threshold can complement conditional zonings without replacing them. It is important to note that the smallest market-rate conditional zoning approval in Chapel Hill to-date was over 4 times larger than the current threshold for administrative approval and over twice as large as the proposed threshold. Smaller projects are likely to offer fewer amenities (gyms, swimming pools, etc.) than larger multifamily developments and may be targeted to different demographics. Smaller projects also appeal to different types of developers and investors.

This suggests that the new threshold may not actually reduce the number of larger scale projects that go through conditional zoning. Instead, it can help to enable smaller-scale projects that were previously frozen out of the Chapel Hill housing market.

Other Community Benefits:

As discussed during the March 13, 2024, Council Work Session, new development can provide "community benefits" in many ways. These can include the development itself (e.g., housing); the way the development is operated or designed (e.g., *affordable* housing); or some other benefit the developer agrees to provide (e.g., a housing project that preserves environmentally sensitive land).

For smaller-scale residential projects, the development itself is the most significant community benefit. Smaller-scale developments directly support Complete Community goals such as promoting urban in-fill and providing a diverse set of housing types.

Certain "community benefits" can only be secured through the conditional zoning process and cannot become requirements for projects that are approved through an administrative process. Examples include:

- Energy efficiency standards that exceed the State's requirements;
- Publicly accessible greenways or other public amenities outside the public right-of-way; and
- Large-scale land conservation.

Meanwhile, examples of "community benefits" that can be required through an administrative process include:

- More stringent stormwater control and landscaping standards;
- Greenways, multiuse paths, or other connectivity improvements in the public right of way; and
- EV chargers.

Guardrails:

The proposed change will not mean that 20-unit apartment buildings can be built anywhere or anyhow in Chapel Hill. LUMO and the Zoning Map will serve as critical guardrails.

Through its authority over the Zoning Map, Council will have full control over the general location of these missing middle developments. Appropriate zoning districts for these types of developments could include any of the Town's commercial, high-density residential, and mixed-use districts.

Likewise, LUMO's updated design/dimensional standards, landscape standards, and other requirements would all be applicable and work to protect the Town's interests.

Any threshold defined in LUMO creates some risk for abuse. For example, under the current 20/40 rule, a developer could subdivide a large downtown parcel into smaller lots and construct one 19,999 square foot building on each lot. Even if the buildings functionally operate as one much larger development, the current rules allow each building to be approved administratively.

Relatively simple guardrails can reduce the chance of developers abusing a revised threshold. At a minimum, staff recommend that separate developments on adjacent lots should be treated as a single development if they share parking facilities or other infrastructure.

c. Commercial Development

Staff Recommendation: *In appropriate zoning districts, allow commercial developments of up to 40,000 square feet of floor area through administrative approval.*

As discussed during the March 13, 2024, Council Work Session, the Town needs more commercial development to help it achieve a more stable and robust tax base. This sort of development can also create more opportunities for residents to shop, work, and play in Chapel Hill. In this context, the development itself is a significant community benefit that can help the Town achieve its Complete Community goals.

Many of the Town's existing commercial centers (e.g., Eastowne, Midtown, Timberlyne, etc.) are aging and can expect to see at least some amount of redevelopment in the next few decades. Meanwhile, entirely new commercial development is most likely along the Town's major transportation corridors. These are all areas of Chapel Hill in which commercial development is appropriate and expected (as outlined in the Future Land Use Map). Allowing these locations to add density without Council approval could help to spur the sort of development activity the Town needs.

The proposed 40,000 square foot threshold for administrative approvals represents a significant albeit incremental increase over the Town's current threshold of 20,000 square feet. If there is appetite for a more significant change, the Town could consider using higher thresholds in certain zoning districts or eliminating the threshold altogether.

Stormwater Concerns:

Town staff are not yet recommending changes to the 40,000 square foot land disturbance threshold for administrative approvals of commercial development.

For sites with little to no existing impervious surface, it is most likely appropriate to raise or even eliminate the threshold. As these sites develop, they will be required to meet the Town's modern stormwater regulations.

However, for sites with a significant amount of existing impervious surface, the Town will need to balance the tradeoffs between two priorities: facilitating commercial redevelopment and bringing legacy sites into compliance with modern stormwater requirements.

In a by-right context, State law only allows the Town to impose more stringent stormwater management requirements on *new impervious surface*. Therefore, if a large commercial site redevelops, the Town would not be able to enforce new requirements related to the 100-year storm event (or in many cases, even the 25-year event) if the site maintained the same amount of impervious surface. Even if the site added impervious surface, the more stringent requirements would only apply to the net increase in impervious surface.

II. Conditional Zoning

Conditional zoning is a powerful tool to regulate development in Chapel Hill. However, the Town's current conditional zoning process creates significant costs and risks for developers and stifles progress towards a more complete community. This section addresses opportunities to improve the conditional zoning process by:

- *Shifting the focus of staff review from LUMO-compliance to consistency with the Comprehensive Plan and Complete Community Strategy.*
- *Eliminating the need for a detailed site plan.*

As explained below, these recommendations draw on precedent from within Chapel Hill and from neighboring communities.

a. Why Is a Streamlined Process Needed?

Equity: Each of the factors discussed below directly contributes to a lack of equity in our current process. A costlier and more exclusive process is inherently a less equitable process. It affords fewer people the opportunity to do business and create wealth in Chapel Hill and limits the extent to which new development can serve a diverse community.

Cost: The rezoning process is one of the riskiest periods in the lifecycle of a new development. This means it is also one of the periods in which developers are the most likely to be deterred by high costs. Anecdotal evidence suggests that a conditional rezoning in Chapel Hill typically costs several hundreds of thousands of dollars. Developers usually pay for these costs out-of-pocket or through high-cost debt or investments. The high costs that have come to be associated with the Town's rezoning process narrow the field of developers that are able or willing to do business in Chapel Hill. This lack of diversity in Chapel Hill's development community can contribute to fewer and less diverse projects that serve fewer and less diverse communities.

Reducing the cost of the development review process can also partially offset the impacts of new LUMO standards that will increase development costs. Changes like stronger environmental protections, EV charging requirements, or more stringent landscaping standards are very likely to increase development costs. While these new standards

undoubtedly further the Town's environmental and sustainability goals, they may cut against its affordability goals.

Accessibility: Chapel Hill's typical conditional rezoning process is vastly different than the processes used in neighboring communities. A relatively limited number of engineering, design, and planning firms have emerged as the "go-to" consultants for developers looking to build in Chapel Hill. This acts as an additional barrier to entry for individuals interested in developing in the area and further restricts the supply and diversity of new projects in Chapel Hill.

b. Recommendations for Improving the CZ Process

- 1. Staff Recommendation:** *Shift the focus of applications materials and staff review from LUMO-compliance to consistency with the Comprehensive Plan and Complete Community Strategy*

Background

Unlike neighboring communities, Chapel Hill's conditional zoning process requires applicants to demonstrate that their project will comply with LUMO standards. This requirement contributes to application submission requirements that are more detailed (and more costly to meet) than is required under State law.

The Town is not legally required to determine whether a conditional zoning application complies with LUMO standards. The practice is a holdover from when the Town relied heavily on Special Use Permits (SUPs) as the primary approval process for large projects. Based on State statute and caselaw, Town Council must establish "[adequate guiding standards](#)" for how it decides quasi-judicial matters like SUPs. Compliance with local ordinance is one of those standards.

Because applicants for SUPs are required to demonstrate that their project complies with LUMO, the application submission requirements for an SUP are extremely detailed. When the Town adopted the conditional zoning process, it carried over the requirements regarding LUMO compliance and the detailed application requirements from the SUP process even though it was not required to do so.

All projects that receive a conditional zoning approval are subject to a separate review process (Final Plans Review) that is entirely devoted to determining whether a project is compliant with LUMO and other applicable standards. Final Plans Review happens *after* a project is approved by Council.

There is significantly less risk in the process at this stage, so it is more appropriate for applicants to take on the higher costs of this work.

Recommendation Details

Application materials and staff's review should be focused primarily on whether a proposed rezoning is reasonable and consistent with the Comprehensive Plan. Applicants should not be expected to demonstrate that their project is compliant with LUMO standards during the conditional zoning process.

This will allow staff and applicants to focus on discussion around community benefits and other matters that can only be addressed at the conditional zoning stage.

Applicants will still need to determine if they require any modifications to regulations. However, with an updated LUMO, fewer modifications should be needed. With recent projects like the Longleaf Trace Conditional Zoning, staff have gained experience with helping applicants identify needed modifications to regulations even when a less detailed application submission is involved.

- 2. Staff Recommendation:** *Detailed site plans should not be required with Conditional Zonings. In most areas of Chapel Hill, site plans for CZ applications should only have to highlight key site features like environmental constraints, vehicular and pedestrian access points, and the overall developable area of a site. In more sensitive areas – like Downtown – CZ site plans should be required to provide more detailed information like the approximate location of buildings and public amenities.*

Background

A detailed site plan is currently a major component of a CZ application and is also a holdover from the SUP process. Preparing a detailed site plan increases development costs and can limit developers' ability to adapt to new information or changing conditions.

Developers typically receive CZ approval at least a year before a project breaks ground. In some cases, this gap can stretch to several years. During that time, changing conditions or more detailed site analysis can force developers to consider a wide range of changes to their site plans.

Conditional zoning approvals that lock developers into a tightly proscribed site plan can make it difficult or impossible to adapt to these changes. This can leave developers with two generally undesirable options: (1) return to Council for permission to change their conditional zoning or (2) make costly concessions to adhere to the originally approved site plan.

As shown below, less detailed site plans have already been accepted by the Town for some CZ's and offer meaningful examples of how our process can be improved for all CZs.

Recommendation Details

In most parts of Town, CZs should only be required to highlight major environmental constraints, preservation areas, pedestrian and vehicular access points, and the overall "development envelope" in which buildings and parking may be located.

This approach is formally used in the Town's LI-CZD process (Example 1 below) and has been used on an ad-hoc basis for one residential project (Example 2 below). Neighboring communities use this approach for *all conditional zonings*.

The approach could drastically cut down on staff review time and developer costs. It would provide maximum flexibility for developers to adapt to changing conditions as their projects evolve.

The approach would remove staff, Council, and public involvement in designing a site. Site design standards in the new LUMO would apply and would focus on how sites' street frontages impact the public realm.

Shifting staff and Council's focus away from site plans would allow the Town to focus on community benefits like affordable housing, environmental protection, and greenways. Without the added costs associated with revising detailed site plans multiple times, developers may also be more responsive to requests from staff and Council.

In sensitive areas like Downtown, CZs should be required to highlight approximate building and parking locations as well as other site features that impact the public realm (e.g., pedestrian connections through the site, open spaces fronting on the right-of-way, etc.).

This approach is formally used in the Town's expedited review process for affordable housing (Example 3 below) and has been used on an ad-hoc basis for two major commercial developments: the Chapel Hill Life Sciences Center (Example 4 below) and the UNC Health Eastowne Campus.

The approach would largely remove staff and Council involvement in designing a site but would provide assurances of how a site will engage with the public realm.

Example 1 (LI-CZD): A site plan from the 7300 Millhouse Light Industrial – Conditional Zoning District (LI-CZD) application approved by Council in 2018.

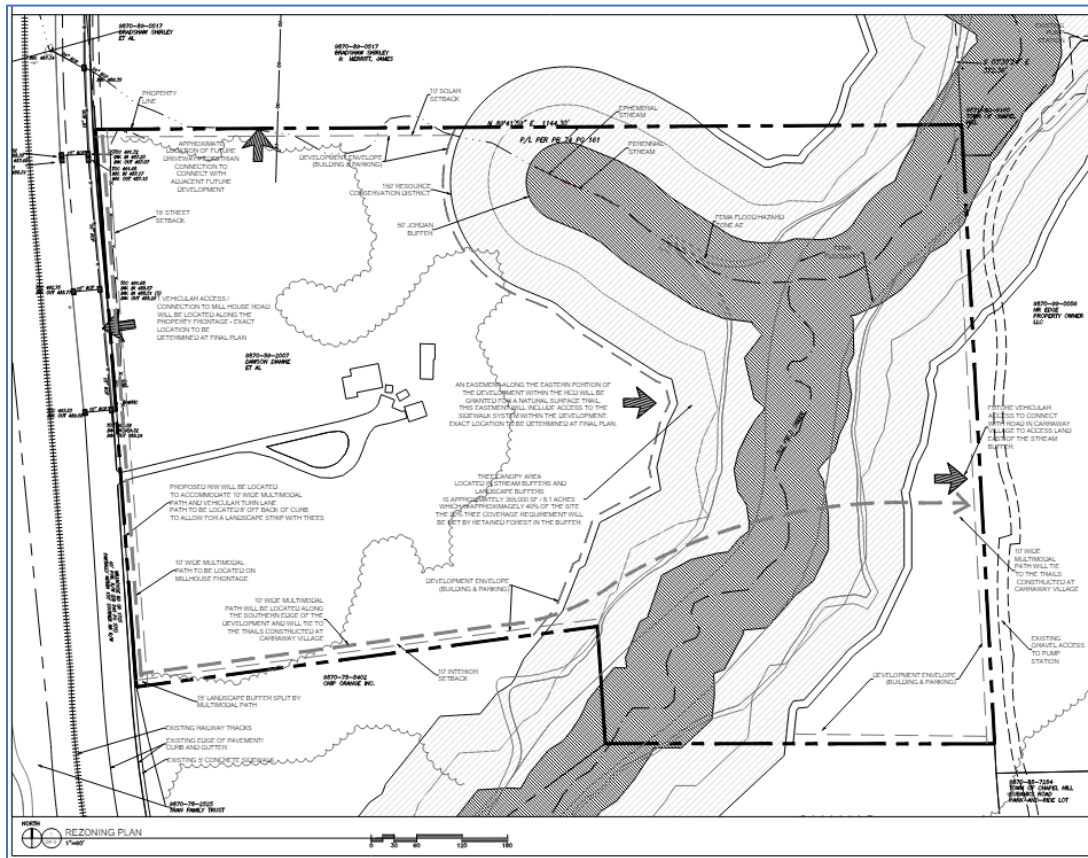
The site plan highlights:

- major environmental constraints like RCD buffers and floodplains
- tree preservation areas
- multimodal paths and vehicular connections to the public right of way and adjacent properties
- the “development envelope” in which buildings and parking will be located (most of the area outside the RCD buffers)
- buffers and setbacks.

The site plan does not include:

- specific building locations
- details of vehicular or pedestrian circulation within the site
- building elevations or massing

Chapel Hill reserves conditional zoning site plans of this sort for the Enterprise Zone off Millhouse Road. **In Durham and Raleigh, all conditional rezoning plans (or their counterparts) resemble the example shown below.**



Example 3 (R-CP-CZD): A site plan from the Longleaf Trace Residential – Community Priority – Conditional Zoning District (R-CP-CZD) application approved by Council in 2024.

The site plan highlights:

- RCD buffers
- tree preservation areas
- pedestrian and vehicular connections to the public right of way and adjacent properties
- the general location of buildings, recreation space, and parking
- buffers and setbacks

The site plan does not include:

- specific building locations
- building elevations

Chapel Hill reserves conditional zoning site plans of this sort for projects in which at least 25% of units are affordable.



Example 4: A site plan from the Chapel Hill Life Sciences Center Conditional Zoning application approved by Council in 2023.

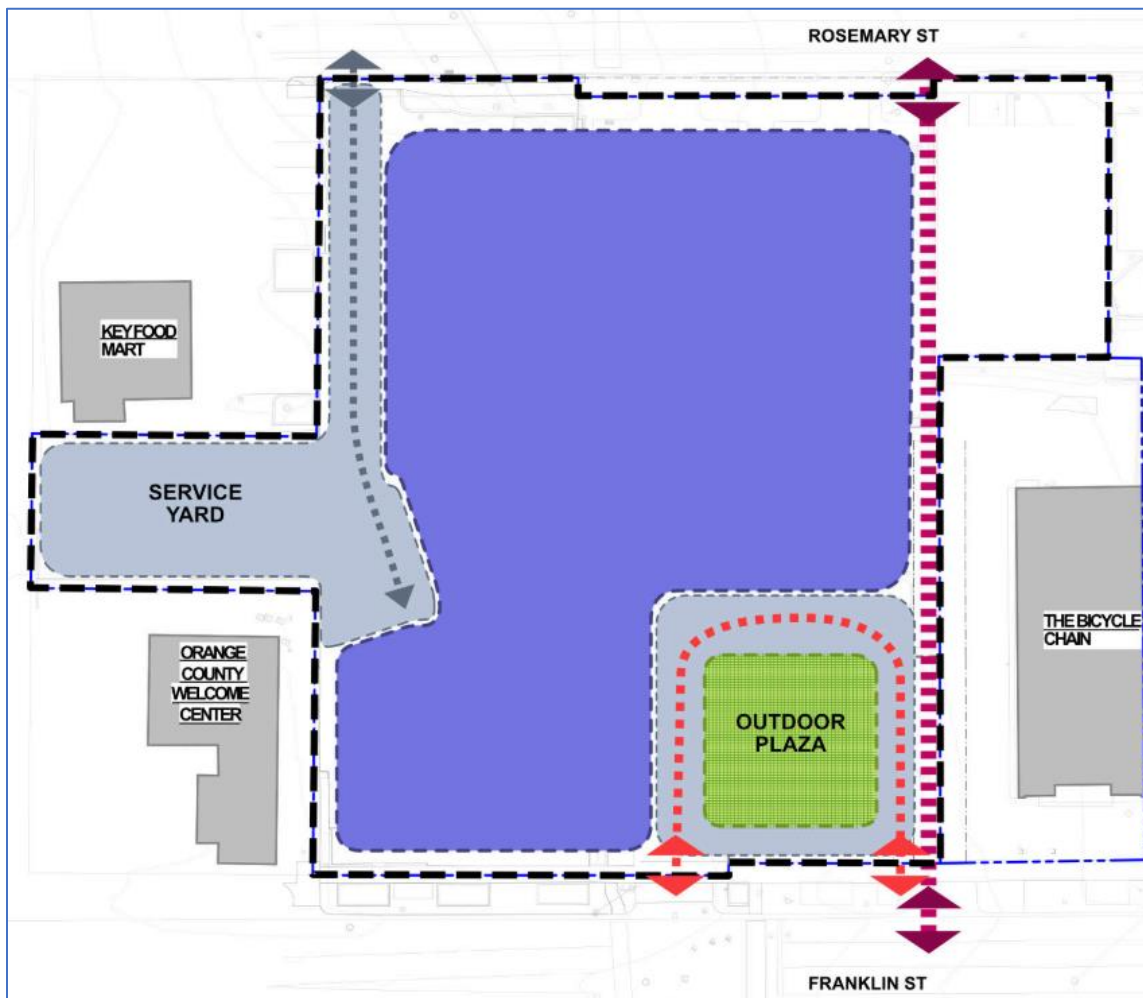
The site plan highlights:

- pedestrian and vehicular connections to the public right of way
- the general location of buildings, outdoor amenities, and service areas

The site plan does not include:

- specific building locations
- building elevations

This site plan provides limited detail. Site plans of this sort have been accepted by Council on an ad-hoc basis.



Attachments

1. Appendix A: Prior Council Meetings and Materials
2. Policy Discussions and Outreach Schedule
3. Engagement and Communications Report

Appendix A: Prior Council Meetings and Materials

April 24, 2024 – [Council Regular Meeting](#)ⁱ

- Meeting Topics
 - Racial Equity Analysis
 - Affordable Housing Economic Analysis
- [Meeting Recording](#)ⁱⁱ (Discussion begins at 03:04:56)
- Recommended documents to review:
 - [Staff Memo](#)ⁱⁱⁱ

March 13, 2024 – [Work Session](#)^{iv}

- Meeting Topics
 - Community Benefits
 - Economic Constraints
- [Meeting Recording](#)^v (Discussion begins at 01:17:30)
- Recommended documents to review:
 - [Staff Memo](#)^{vi}
 - [Typology Resource Guide](#)^{vii}

February 21, 2024 – [Work Session](#)^{viii}

- Meeting Topics
 - Local Zoning Authority
 - Student Housing
 - Drive-Throughs and Shelters
 - Environmental Policy
- [Meeting Recording](#)^{ix} (Discussion begins at 03:25)
- Recommended documents to review:
 - [Staff Memo](#)^x

January 17, 2024 – [Work Session](#)^{xi}

- Meeting Topics
 - Missing Middle Housing
 - Subdivision Standards
 - Flag Lots
- [Meeting Recording](#)^{xii} (Discussion begins at 49:05)
- Recommended documents to review:
 - [Staff Memo](#)^{xiii}

November 13, 2023 – [Work Session](#)^{xiv}

- Meeting Topics
 - Proposed Zoning Districts
 - Building and Site Design Standards
 - Affordable Housing Incentives
- [Meeting Recording](#)^{xv} (Discussion begins at 05:45)
- Recommended documents to review:
 - [Staff Memo](#)^{xvi}
 - [Draft Zoning District Proposal](#)^{xvii}

- [Briefing Book: Feasibility of Density Bonuses to Support Community Benefits^{xviii}](#)

October 18, 2023 – [Work Session^{xix}](#)

- Meeting Topics
 - By-Right Development
 - Development Intensity in FLUM Focus Areas
 - Mixed-Use Districts
 - Parking Minimums
 - Regulations for Single-Family Homes
- [Meeting Recording^{xx}](#) (Discussion begins at 04:36)
- Recommended documents to review:
 - [Staff Memo^{xxi}](#)

June 21, 2023 – [Information Item^{xxii}](#)

- Recommended documents to review:
 - [Summary Report^{xxiii}](#)
 - [Plan Alignment Memo^{xxiv}](#)
 - [LUMO Audit Report^{xxv}](#)

i <https://chapelhill.legistar.com/LegislationDetail.aspx?ID=6636497&GUID=45D24D2F-25AA-4384-BD33-0E88466F0BAB&Options=&Search=>

ii https://chapelhill.granicus.com/player/clip/7084?view_id=7&redirect=true

iii <https://chapelhill.legistar.com/View.ashx?M=F&ID=12855608&GUID=6CB96818-D05F-4479-ABF3-3D0C03F389EA>

iv <https://chapelhill.legistar.com/LegislationDetail.aspx?ID=6563526&GUID=A3C4266B-6390-47E0-8BF8-C7E07565CEB9&Options=&Search=>

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vi <https://chapelhill.legistar.com/View.ashx?M=F&ID=12727883&GUID=E10DFDFB-8C22-4936-9EC0-760B12A5D094>

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viii <https://chapelhill.legistar.com/LegislationDetail.aspx?ID=6512691&GUID=1188AC33-7397-409C-8634-6A143164EB71&Options=&Search=>

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xiii <https://chapelhill.legistar.com/View.ashx?M=F&ID=12561620&GUID=4602FDA9-B882-4B1A-8D18-DB3B7F1FE710>

xiv <https://chapelhill.legistar.com/LegislationDetail.aspx?ID=6411208&GUID=7E0011D5-461C-405E-9B6E-85812D1146CC&Options=&Search=>

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xviii <https://chapelhill.legistar.com/View.ashx?M=F&ID=12442796&GUID=E19A3CA3-E57E-4C78-A8E2-67AA9E5AD0CF>

xix <https://chapelhill.legistar.com/LegislationDetail.aspx?ID=6383925&GUID=838AD17B-7E46-4F69-AFA2-44D1BE4627EC&Options=&Search=>

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