

ORDINANCE A

(Approving the Conditional Zoning Application)

AN ORDINANCE AMENDING THE CHAPEL HILL ZONING ATLAS TO REZONE THE PROPERTY LOCATED AT 157 EAST ROSEMARY FROM TOWN CENTER-2 (TC-2) TO RESIDENTIAL-COMMUNITY PRIORITY-CONDITIONAL ZONING DISTRICT (R-CP-CZD) (PROJECT #CZD-23-4) (2023-11-29/O-3)

WHEREAS, the Council of the Town of Chapel Hill has considered the application for Conditional Zoning submitted by George Retschle, Ballentine Associates, PA, on behalf of contract purchaser TJ Capital II LLC and property owner Paliouras Enterprises LLC, to rezone an 0.31-acre parcel located at 157 East Rosemary Street on property identified as Orange County Property Identifier Number 9788-37-9926, to allow development of a residential building with ground-floor retail 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 because of changing conditions and warranted to achieve the purposes of the Comprehensive Plan, per LUMO 4.4

WHEREAS, the application, if rezoned according to the district-specific plan dated September 27, 2023 and the conditions listed below would, per LUMO 4.4.3(f):

- 1) Conform with the applicable provisions of the Land Use Management Ordinance (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 3.8 Dimensional standards, Table 3.8-1: Dimensional Matrix, Zoning District R-CP-CZD.** Modify dimensional standards for the uses according to the table below:

	LUMO Requirement	Modification
Building Height, Setback	39 ft.	135 ft.
Building Height, Core	60 ft.	157 ft.
Street Setback	10 ft.	0 ft.
Impervious Surface Ratio	0.70 (10,433 sq. ft.)	1.0 (13,549 sq. ft.)

Floor Area Ratio	1.1 (63,994 sq. ft.)	Waived Maximum Floor Area subject to Land Use Intensity table
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This finding is based on a determination that the public purposes are satisfied to an equivalent or greater degree because surrounding uses in the Town Center zoning districts, and the Future Land Use Map (FLUM), contemplate a dense and urban development pattern.

2) LUMO Section 3.10 Inclusionary Zoning, Section 3.10.8: Target Income Levels for Pricing of Affordable Housing Units

	LUMO Requirement	Modification
Affordable Housing Requirements	50 percent of Affordable Units priced at 65 percent AMI and 50 percent of Affordable Units priced at 80 percent AMI	100 percent of Affordable Units priced at 80 percent AMI

This finding is based on a determination that the public purposes are satisfied to an equivalent or greater degree because the project is providing a greater degree of overall affordable units than Inclusionary Zoning would require.

3) LUMO Section 5.6 Landscaping, screening and buffering, Section 5.6.6 Schedule of required buffers, Table 5.6.6-1: Schedule of Required Buffers (R-CP-CZD)

	LUMO Requirement	Modification
Northern Buffer	Type B - 10 ft. Wide	Modified buffer as indicated on the district-specific plan

This finding is based on a determination that the public purposes are satisfied to an equivalent or greater degree because Residential-Community Priority Conditional Zoning District (R-CP-CZD) allows for the Town Manager to waive the requirement where site constraints make such a buffer impracticable. The developer is committing to provide a modified buffer as opposed to a waived buffer.

4) LUMO Section 5.9 Parking and loading, Section 5.9.5: Parking Design Standards

	LUMO Requirement	Modification
Parking Dimensions	25 ft. wide drive aisles and 18.5 ft. long parking spaces	24 ft. wide drive aisles and 18 ft. long parking spaces

This finding is based on a determination that the public purposes are satisfied to an equivalent or greater degree because spaces would meet current design manual standards.

5) LUMO Section 5.9 Parking and loading, Section 5.9.7 Minimum and Maximum Off-Street Parking Space Requirements: Minimum Parking Requirements (R-CP-CZD)

	LUMO Requirement	Modification
Minimum Parking Spaces	59 spaces	Meet standards of Town Center Zoning District; no parking minimums

This finding is based on a determination that the public purposes are satisfied to an equivalent or greater degree because the existing zoning district has no parking requirements, additional on-site parking may impact affordability negatively, and additional parking may be provided by utilizing nearby parking lots and garages.

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 Residential-Community Priority Conditional Zoning District (R-CP-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 identified by Parcel Identifier Number 9788-37-9926, described below, along with the area extending to the centerline of the adjoining East Rosemary Street right-of-way, shall be rezoned to Residential-Community Priority-Conditional Zoning District (R-CP-CZD):

Being all of the property described and conveyed to Paliouras Enterprises, Inc. in Book 210, Page 868, and later conveyed to Paliouras Enterprises LLC in Book 2570, page 520 of the Orange County Registry, and half of the adjacent Right of Way of East Rosemary Street (a public 38' R/W per Plat Book 99, page 140).
Chapel Hill Township, Orange County, North Carolina.

Being all that certain land more particularly described as follows:

COMMENCING from NGS Monument "Bike" (PID# EZ2788) having published North Carolina State Plane Coordinate System coordinates of Northing: 790,486.16' Easting: 1,983,511.69'; thence South 09°54'49" East a distance of 2,465.52 feet to a set iron pipe on the line of Spike III LLC (PIN# 9788-38-8082 / Deed Book 3644, page 292 / Plat Book 98, Page 42), and the southwest corner of Gamma Lambda of Phi Mu Fraternity House Corp [GLPMF] (PIN# 9788-38-9102 / Deed Book 4705, page 486), and being the point of BEGINNING; thence along the line of GLPMF North 65°05'34" East a distance of 119.43 feet to an existing 1/2" iron pipe on the line of Celeste Sloop, et al (PIN# 9788-48-0001 / Deed Book 2296, page 210); thence along the line of Celeste Sloop, et al South 25°14'38" East a distance of 114.86 feet to a point at the northern right of way of East Rosemary Street (a public 38' R/W), and passing an iron at 104.86 feet; thence South 25°14'33" East a distance of 17.88 feet to the center of the right of way of East Rosemary Street; thence along the center of East Rosemary Street the following two (2) calls: South 64°45'27" West a distance

of 28.90 feet to a point; thence South 64°40'52" West a distance of 87.56 feet to a point; thence North 25°19'08" West a distance of 18.67 feet to a point at the northern right of way of East Rosemary Street, and the southeastern corner of Spike III LLC; thence along the line of Spike III LLC North 26°42'39" West a distance of 114.92 feet to the point of BEGINNING, containing a total area of 15,676 square feet, or 0.36 acres, more or less.

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 the first Zoning Compliance Permit must be filed by November 29, 2025 (2 years from the date of this approval). [LUMO 4.4.7(f)]
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:

Land Use Intensity	
Permitted Uses	Business—Convenience Business—General Dwelling units, multifamily, over 7 dwelling units Customary accessory uses
Gross Land Area (GLA)	14,904 sq. ft.
Maximum Floor Area	89,250 sq. ft.
Permitted Dwelling Units	50-60 total units
Dimensional Regulations	Maximum Building Height, Setback: 135 ft. Maximum Building Height, Core: 157 ft. Minimum Street Setback: 0 ft.
Minimum Affordable Units	25% of total units (see Affordable Housing Plan)
Minimum and Maximum Vehicular Parking	Follow TC-2 Standards for minimum and maximum
Minimum Bicycle Parking	28 spaces
Maximum Total Impervious Surface	100%
Maximum Land Disturbance	17,000 sq. ft.
Steep Slopes Maximum Land Disturbance	0 sq. ft. of area containing natural slopes 25% or greater
Minimum Tree Canopy Coverage	30%
Minimum Recreation Space	0 sq. ft. on-site (\$8,942.40 payment-in-lieu)

4. Impervious Surfaces and Land Disturbance: This approval limits the amount of impervious surface and land disturbance as indicated in the above Land Use Intensity Table. These limits apply to the entire project site, including areas containing steep slopes.
 - a. An increase in the maximum impervious surface area or steep slopes land disturbance area shall constitute a major modification.
 - b. An increase in land disturbance up to 10 percent shall constitute a minor

modification. An increase over 10 percent shall constitute a major modification. All increases shall be considered cumulatively.

- c. Modifications procedures as outlined in LUMO 4.4.7(h) shall apply.

Affordable Housing

5. Affordable Housing Plan: The developer shall provide the following:
 - a. Affordable Units: 25 percent of the total units (50-60 proposed units) will be affordable units, rounded to the nearest whole unit.
 - b. Unit Size: The affordable units will include 2-3 bedrooms and will be comparably sized to the market rate units.
 - c. Location: The affordable units will be integrated into the community as shown on the site plans dated September 27, 2023.
 - d. Pricing: All of the affordable units will be reserved for those making 80 percent or less of the Area Median Income (AMI). 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. Pricing will consider the total cost of mortgage principal and interest, property taxes, homeowners and condo association fees, any mandatory maintenance fees, and homeowner's insurance such that a household's total housing costs do not exceed 30 percent of their household income.
 - e. Phasing: At least fifty percent of the affordable housing shall be completed prior to the Zoning Final Inspection of the first half of the market rate dwelling units. The remaining affordable dwelling units shall be completed prior to Zoning Final Inspection of 90 percent of the market rate dwelling units.
 - f. Affordability Period: The affordable units will be affordable for a period of at least ninety-nine (99) years.
 - g. Design:
 - i. The affordable units will be finished with similar exterior design, trim, materials, and details as the market-rate units.
 - ii. The affordable units will meet the same energy efficiency standards as the market-rate units.
6. Affordable Housing Performance Agreement: Prior to the issuance of a Zoning Compliance Permit, a performance agreement that incorporates the approved Affordable Housing Plan must be executed by the developer, the Town Manager (or designee), and if known, the non-profit agency that will administer the affordable housing units.

Environment & Sustainability

7. Gasoline Discharge: Foundation drain water pumping/discharging into the storm sewer system must be tested for water quality to ensure that concentration limits for gasoline products stipulated in NPDES General Permit NCG510000 are met before discharging to the stormwater drainage system.
8. Sustainability: The developer shall provide a finalized Energy Management Plan that addresses items listed below. The plan may be provided per phase, if applicable. The Energy Management Plan may be phased but must be approved prior to issuance of a Zoning Compliance Permit. After construction of all buildings is completed, an update to the plan may be requested for subsequent changes that require a Zoning Compliance Permit.
 - a. The plan shall:
 - i. Demonstrate how the developer utilizes sustainable energy, currently defined as solar, wind, geothermal, biofuels, and hydroelectric power.

- ii. State that the developer will consider the purchase of carbon offset credits and green power production through coordination with the NC GreenPower program.
 - iii. Demonstrate how the developer will make a good faith effort to incorporate a "20% more energy efficient" feature relative to the energy efficient standard of the American Society of Heating, Refrigeration, and Air Conditioning Engineers (ASHRAE), as amended and in effect at the time of this Conditional Zoning approval (e.g., ASHRAE 90.1 2019). The developer may use comparable standards generally recognized as applicable to building energy consumption, as amended and in effect at the time of building permit issuance.
 - iv. Demonstrate how the developer will design the project to address the following climate action commitments:
 - a. Any provided parking spaces will include infrastructure to provide an EVSE-capable space.
 - b. If any parking spaces are provided on site at least one shall be EV ready.
9. Irrigation: If permanent irrigation is proposed to support landscaping, an irrigation plan shall be submitted which includes the use of smart technologies to conserve water and energy. Smart technologies refer to a smart watering irrigation system with a controller that meets the United States Environmental Protection Agency's WaterSense standards.

Design

10. Minimum Design Standards: The developer shall include design features found in the Conditional Zoning application in the Zoning Compliance Permit application for review. These design features shall, at a minimum, include:
- a. The presence of balconies on the Rosemary Street frontage
 - b. Use of terra cotta styled brick on the northern wall
 - c. Building overhangs to cover pedestrian spaces
11. Community Design Commission (CDC) Review: The Community Design Commission shall review building elevations, site lighting, and the location and screening of all HVAC equipment before the issuance of a Zoning Compliance Permit for a particular phase or building. After construction of all buildings is completed, Commission review is not required for subsequent changes to building elevations or site lighting that do not require a Zoning Compliance Permit.

Transportation, Access, and Connectivity

12. Transportation Management Plan: Prior to issuance of a Zoning Compliance Permit, the developer shall submit a Transportation Management Plan, subject to Town Manager approval. The Transportation Management Plan shall include monitoring of electric vehicle parking spaces usage.
13. Traffic Signs: The developer shall be responsible for placing and maintaining temporary regulatory signs before approval of a Zoning Final Inspection.
14. Street Lighting: The developer shall install street lighting or upgrade existing street lighting along the site frontages as required by the Town Manager with approval by the North Carolina Department of Transportation (NCDOT), if applicable. The design shall be approved by the Town Manager and the NCDOT.

15. 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.
16. 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.

Homeowner Association

17. 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 Section 4.6.7 of the Land Use Management Ordinance. The Homeowners' Association covenants shall not exclude home occupation businesses as regulated by the Town of Chapel Hill.
18. 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.
19. 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. 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.
20. 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.
21. 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

22. Recreation Space: 100 percent of the required recreation space for the project shall be provided in the form of a payment-in-lieu. Prior to the issuance of a Zoning Compliance Permit, the developer shall provide a payment of \$8,942.40 for recreation space.
23. 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.
24. 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.

25. 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 Design Manual. [LUMO 4.4.7]
26. Construction Management Plan: A Construction Management Plan shall be approved by the Town Manager prior to issuance of a Zoning Compliance Permit. The construction management plan shall: 1) indicate how construction vehicle traffic will be managed, 2) identify parking areas for on-site construction workers including plans to prohibit parking in residential neighborhoods, 3) indicate construction staging and material storage areas, 4) include crane management and road closure plans, 5) identify construction trailers and other associated temporary construction management structures, and 6) indicate how the project construction will comply with the Town's Noise Ordinance. [Town Design Manual Chapter 10]
27. 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.
28. Bicycle Parking: Bicycle parking spaces must also comply with the Spring 2015 Association of Pedestrian and Bicycle Professionals Guidelines.
29. Invasive Exotic Vegetation: The developer shall remove all invasive exotic species of vegetation as identified by the Southeast Exotic Pest Plant Council (SE-EPPC) and in Section 5.7.6 of the Land Use Management Ordinance (LUMO). Prior to issuance of a Zoning Compliance Permit, the developer shall identify all invasive exotic species of vegetation contained in any undisturbed areas including but not limited to areas outside of limits of disturbances, areas designated for tree protection, areas containing required buffers, or other areas as deemed necessary by the Town Manager.
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.

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 157 East Rosemary Street.

This the 29th day of November, 2023.