

**ORDINANCE AMENDING THE ZONING MAP &
AUTHORIZING ISSUANCE OF A CONDITIONAL USE PERMIT
#95CU13**

WHEREAS, the rezoning petition and application for a conditional use permit of Heartland Carolina Triangle 55 Limited Partnership, petitioner/owner, for the rezoning of lands hereinafter described was duly filed with the Office of the Planning Director and thereafter public hearings were held hereon on the 14th day of August and the 5th day of September, 1995, respectively before the Planning Board and the Town Board of Commissioners, pursuant to due notice published as required by statute. Thereafter, the Planning Board submitted its final report as sworn testimony to the Board of Commissioners recommending denial of said application for the rezoning of lands hereinafter described, all in accordance with the requirements of the Town of Apex Zoning Ordinance and the provisions of Article 19 Chapter 160A of the General Statutes of North Carolina; **NOW, THEREFORE;**

BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE TOWN OF APEX

Section 1: The Apex Zoning Ordinance, including the official Apex, North Carolina Zoning Map, which is a part of said Ordinance, is hereby amended by changing the zoning classification of the lands hereinafter described from Wake County Highway District to SC-CU (Shopping Center - Conditional Use) District, said lands so rezoned being described as follows:

All those certain tracts of land shown on a map entitled "Annexation Map for the Town of Apex, Property of Heartland Raleigh-Durham Highway 55 Limited Partnership" and recorded in Book 1995 Page 1495, Wake County Register of Deeds.

Section 2: The Planning Director is hereby authorized and directed to cause the said official Zoning Map for the Town of Apex, North Carolina to be physically revised and amended to reflect the zoning changes directed by this Ordinance.

Section 3: A Conditional Use Permit is hereby issued whereby the previously described property and the subject of the previously mentioned change in zoning classification is subject to the following limitations and conditions:

Tract 1 (West of NC 55; PIN #0733.04-61-2395)

1. Until such time as the Scott Farm subdivision is served by a public water line, there shall be no underground storage tanks as defined in the Criteria and Standards Applicable to Underground Storage Tanks, as found in the North Carolina Administrative Code, Title 15A, Subchapter 2N, Section .0203.
2. Miniature golf courses and outdoor amusement parks shall not be permitted.
3. Maximum building height shall be three stories

4. The thoroughfare buffer along Jenks Road shall have an average width of 35' with a minimum width of 25'. The buffer shall include an undulating berm at least 3' in height. Plantings shall include one large shade tree for every 40' of street frontage and four ornamental trees or large shrubs and seven smaller shrubs planted for every 50' of street frontage. The landscaping shall be well-maintained according to the Town of Apex Code.
5. All building, parking lot and signage lighting shall be designed to protect against the spillover of light into adjacent residential properties. All exterior lighting shall be shielded from adjacent residential uses by thick evergreen vegetated buffers, berms, walls or fences or the use of directional lighting, special fixtures, timing devices, appropriate light intensities, luminaries and mountings at the following standards:
 - a. Outdoor lighting shall be designed, located and mounted at heights no greater than 18' above grade for non-cut-off lights and 35' above grade for cut-off lights.
 - b. All outdoor lighting shall be designed and located such that the maximum illumination measured in foot candles at the property line shall not exceed .3 for non-cut-off lights and 1.5 for cut-off lights.
6. All new electric utility lines internal to the site shall be located underground.
7. No loudspeakers shall be directed toward Jenks Road.
8. Car washes shall be limited to a full-service car wash or a self-service single-stall car wash associated with gasoline sales.
9. Any fast food restaurant with a drive-in window shall have frontage on NC 55.

No motels with exterior doors to patron's rooms are allowed with the exception of upper-economy motels that are the franchise of a full-service hotel.

Access to NC 55 shall be limited to one full-service access to be located at time of subdivision and/or site plan approval. Right-in/right-out access points would also be addressed at the time of subdivision/site plan approval.

Access to Jenks Road shall be limited to one full-service access located directly opposite Trelawny Road.

Tracts 2 and 3 (East of NC 55 PIN #0733.04-70-1519 and 0733.04-60-7029

1. If the property adjacent to the north is zoned Highway District and used for single-family residential use, the improved buffer along the northern property line shall be a minimum of 50' wide. Existing vegetation shall be retained where feasible. Where there is no existing vegetation, a berm at least 4' in height shall be provided.

**BEFORE THE BOARD OF COMMISSIONERS OF
THE TOWN OF APEX**

**RE: APPLICATION FOR CONDITIONAL USE PERMIT #95CU13,
DATED JUNE 19, 1995**

FINDINGS OF FACT

1. Heartland Carolina Triangle 55 Limited Partnership, petitioner/owner submitted a completed application for a conditional use permit on the 19th day of June, 1995. The proposed conditional use permit is designated #95CU13.
2. The Planning Administrator for the Town of Apex, David R. Rowland, caused proper notice to be given (by publication, posting and mailing) of a public hearing on #95CU13 before the Planning Board held on the 14th day of August, 1995.
3. Pursuant to N.C. G.S. Sec. 160A-384 and Apex Code Sec. 22-6(g), the Planning Administrator caused proper notice to be given (by publication, posting and mailing) and the applicant certified the mailing of the same to the property owners entitled to notice, of a public hearing on #95CU13 before the Apex Board of Commissioners held on the 15th day of August, 1995 and continued on the 5th day of September, 1995.
4. The Apex Planning Board held a public hearing on the 14th day of August, 1995 and gathered facts and received public comments and formulated a recommendation regarding the application for conditional use permit #95CU13. The Apex Planning Board recommended denial of the application for #95CU13.
5. The Apex Board of Commissioners held a public hearing on the 5th day of September, 1995. The applicant for conditional use permit #95CU13 established by competent sworn testimony all matters in the application for the proposed conditional use and established that granting the proposed conditional use is in the public interest. David Rowland presented the Planning Board's recommendation at the public hearing. Additionally, he presented the Planning staff's recommendation that the application for #95CU13 be approved for reasons contained in a memorandum to the Planning Board dated August 4, 1995.
6. All persons who desired to present evidence relevant to the application for #95CU13 and who were either residents of Apex or its extraterritorial jurisdiction or who owned property adjoining the property for which the conditional use permit is sought were allowed to present evidence at the public hearing before the Board of Commissioners.

The public interest will be served by granting conditional use permit #95CU13 in that it will promote economic development, employment opportunities, the growth of small entrepreneurial businesses while being tailored to develop the property in harmony with the existing land uses and is consistent with the Joint Apex-Wake County Land Use Plan.

- 7b. The proposed conditional use will not adversely affect the health, safety or welfare of the residents of Apex or its extraterritorial jurisdiction.
- 7c. The proposed conditional use will not be substantially detrimental to the use or development of adjacent properties.
- 7d. The proposed conditional use will not constitute a nuisance or hazard.

CONCLUSION OF LAW

1. The applicant submitted a completed application for the conditional use permit.
2. The matters stated in the applicant's application for the proposed conditional use permit are supported by competent and substantial evidence.
3. Granting conditional use permit #95CU13 is in the public interest.
4. Granting conditional use permit #95CU13 will not adversely effect the health, safety or welfare of the residents of Apex or its extraterritorial jurisdiction, will not be substantially detrimental to the use of or development of adjacent properties, and will not constitute a nuisance or hazard.
5. Applicant is entitled in law and in fact to the granting of conditional use permit #95CU13.

DECISION

The Apex Town Board grants applicant's conditional use permit #95CU13. A certified copy of the pertinent minutes of the Apex Town Board meeting of August 15, 1995, September 5, 1995, October 3, 1995, including these findings shall constitute conditional use permit #95CU13.

Approved as to form:


Paul Stam, Jr., Town Attorney