



Village of Marvin

DATE: August 31, 2023

TO: Village Council

FROM: Hunter Nestor, Planner and Zoning Administrator

SUBJECT: Discussion and Recommendation of Conditional Rezoning Application CZ 2023-1 (Zepa Capital, LLC)

Background

Zepa Capital, LLC has applied for a conditional zoning map amendment to rezone the 1.518 acres located at 9908 New Town Rd., from R-Marvin Residential to the Marvin Heritage District (Commercial Only). The subject property is further identified by parcel numbers 06-225009A. The rezoning is for Rezoning requested to allow for development of the site as a Commercial “Village” to include commercial uses such as retail, restaurant, and office per the Marvin Heritage District Form-Based Code.

The Village Council adopted the Marvin Heritage District Form-Based Code (MHD FBC) in January of 2022 ([OR-2022-01-02](#)). This established the Marvin Heritage Conditional Zoning District and the regulations for the district. The applicant submitted this rezoning application in April of 2023 and amended their application submittal in June 2023.

The Village Council held a Public Hearing on August 8th at 6PM at Village Hall for Discussion and Consideration to rezone the 1.518 acres located at 9908 New Town Rd., from R-Marvin Residential to the Marvin Heritage District (Commercial Only). A Public Hearing is required for any rezoning request. The Council closed the Public Hearing after hearing public discussion and deliberation on the rezoning application. The Council tabled the discussion and decision to the August 31st Meeting for further discussion and decision.

Analysis

Surrounding Land Use and Zoning

	Existing Land Use	Zoning Designations
Subject Property	Vacant, Residential	R-Marvin Residential
North	Residential/Common Open Space (Preserve at Marvin)	R-Marvin Residential
South	Vacant/Agriculture (Fincher Property)	R-Marvin Residential
East	Vacant (Crane Store Property)	R-Marvin Residential
West	Civic/Vacant (Weddington United Methodist Church)	R-Marvin Residential



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General: The rezoning application is to rezone the subject property from R-Marvin Residential to the Marvin Heritage Conditional Zoning District Commercial Only (MHD-CO) for permitted and special commercial uses such as retail, restaurant, and office per the Form-Based Code. The purpose of the rezoning request is to develop the Site to those commercial uses that are in accord with the vision created by the Village of Marvin community through its approved Heritage District Small Area Plan. Rezoning the Site to HD-CO enables Applicant to use the Site for those commercial uses allowed in HD-CO zoning.

The site currently consists of approximately 1.518 acres, with an existing 100-year-old farmhouse, carport, and shed. The applicant is proposing to demolish carport/shed structures and renovate the existing house with the intention to preserve the overall exterior appearance of the existing farmhouse.

The proposed development would convert the interior of the existing farmhouse to commercial use such as a restaurant/tavern. A 1,545 SF commercial kitchen addition is proposed to the existing structure. Additionally, the proposed development includes two new 5,000 SF two-story buildings (10,000 SF total for each) for retail and office uses, totaling 21,550 SF of new gross building area. Development of the project will be phased, with completion not anticipated to exceed 10 years.

Permitted Uses: The intended uses include specialty commercial and retail space offering goods and services such as ice cream, coffee, specialty foods and wines, gifts, clothing boutique, art gallery, etc. on the first floor, with office type uses on the second floor of the two new commercial buildings. The existing farmhouse and proposed addition thereto are currently planned for a restaurant with commercial kitchen and retail space. Proposed uses within the Site are subject to change based on market demand, but once rezoned, uses are limited to those allowed in HD-CO zoning.

Tree Preservation: The applicant is proposing to disturb as little as possible and save the larger canopy trees on the site where possible. Tree Preservation and Mitigation Plan is required in the Preliminary Plat and Construction Documents Phase.

Water and Sewer: This development will utilize Union County Water and Sewer. The applicant will have to secure the required easements and Right-of-Way Encroachments to extend the main water line from the Roundabout at Waxhaw-Marvin and New Town Road to the front of the subject property. The applicant will need to secure the required easement to extend the main Sewer Line from the rear of the Crane Store and Preserve Common Open Space properties. The Site's sewer and water needs have been calculated as set forth in the attached chart and Applicant has confirmed with Union Public Works that sufficient capacity currently exists to service the Site. The full details of the utility plan will be submitted during the preliminary plat and construction document phase if the rezoning is approved.



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Buffers: The Developer is proposing a 20 FT Buffer at the rear of the property with a 6 FT high solid opaque fence and a row of evergreen plantings to accompany the 30 FT COS from the Preserve at Marvin. This totaling a total of a 50 FT vegetive rear buffer from the adjacent residential properties. The planted evergreens will be minimum of 6 FT tall at time of installation. The actual location of plantings will be field located and identified on the construction plans and applicant proposes to use native species. Additionally, a 5FT Landscape Buffer on the side property lines is being proposed.

If existing trees do not provide the opaque buffer as intended by the ordinance, vegetative screening must be installed and maintained to enhance the buffer within the 20-foot buffer width. **The specifics opaqueness will need to be added to the construction and preliminary plans for review and approval.**

Open space: The applicant is proposing 28.26% of landscaping and buffering, and 11.87% of pedestrian oriented hardscape and outdoor amenity space. This totals 40.13% reserved open space for the development.

Greenway and Trails: Applicant has conveyed an easement for the public construction, use and maintenance of an eight (8) foot wide sidewalk along the site's frontage on New Town Road (Marvin Loop) to the extent necessary to allow the sidewalk to meander out of the existing right of way to avoid physical and environmental constraints. The applicant is proposing to either construct its portion of the Marvin Loop or will consider a payment in lieu to the Village for their portion of the Marvin Loop Project (BL-0012), Internal sidewalks and pedestrian connections shall be provided on the site as generally depicted on the rezoning plan.

Vehicle Access and Transportation: Access to the site will be from New Town Road in the manner generally depicted on the master site plan. The placement and configuration of the vehicular access point(s) are subject to any minor modifications required to accommodate final site development and construction plans and to any adjustments required for approval by NCDOT and the Village in accordance with applicable published standards.

The applicant is proposing cross access connections for adjacent sites for internal vehicular connection. Should the adjacent property owners elect to develop their properties and pursue a connection between their properties and the site in the future, the applicant agrees to grant said adjacent owner(s) a cross access easement upon mutually agreeable terms and conditions as set forth in an easement agreement; provided however, that all costs related to the construction of the connection into the site will be born solely by the respective adjacent property owner.

Parking: The proposed development has 53 parking spots and 4 ADA Accessible Parking Spots for a total of 57. Off-street parking will be provided based on market but connections to existing trails and the proposed Loop will be provided to afford area residents the opportunity to walk or ride bikes to the development. Applicant is looking to secure additional shared use parking options on adjacent sites.



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The applicant is proposing three deviations regarding the parking for the development. The surface of the non-ADA parking spots to be a stone, gravel, or turf. The applicant will provide a maintenance plan and agreement for the parking lot. The applicant shall provide bicycle spaces as required by ordinance. In lieu of a designated loading space, loading and unloading to service uses on the site will be performed from the parking area. The applicant will be designating two parking spaces as loading zones during designated hours of the day. The applicant will provide vertical curbing material around the perimeter of the parking lot to contain gravel or other parking surface material. Parking spaces within the parking lot shall be striped on pavement, or wheel stops on gravel. The applicant shall pave the driveway entrance from existing roadway pavement to the edge of right of way or back of proposed sidewalk, whichever is greater.

Lighting: The applicant shall submit a lighting plan consistent with ordinance requirements. The applicant shall provide a photometric plan. Light trespassing shall not exceed one (1.0) foot-candle at any property line that adjoins residential uses or property zoned for residential uses.

Other agency notes (not fully required at this step):

- NCDOT: Applicant has already consulted with NCDOT, and the development now will only have one Primary Entrance and one Fire/Emergency access entrance. NCDOT may require additional road improvements to New Town Road. Peak hour trip counts calculated based on proposed uses are shown on the attached chart and did not reach the threshold for requiring a traffic impact study as part of the rezoning process. Another roundabout is proposed for construction this summer to move traffic more effectively through the area. DOT will also review anticipated trip counts generated from the Site as part of its driveway permit process.

Public Involvement Meeting: The Applicant held 2 Public Involvement Meetings. The first was held on April 19th, 2023, and the applicant held two sessions. The second PIM was held on June 6th, 2023. Both were at Village Hall. The PIM Meetings minutes and sign-in sheets are attached in the Planning Board Packets.

Compliance with the Marvin Heritage District Form-Based Code and other applicable sections of the Village of Marvin Zoning Ordinance

The applicant has requested a few deviations from the regulations in the Form-Base Code. The three requested deviations have been reviewed by Staff and are recommended as part of the approval. These deviations can be found in the CZ Rezoning Plans and Information Attachment in the packets. Overall, the proposal complies with the regulations within the Marvin Heritage District Form-Base Code.



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Development Agreement

The applicant has submitted a draft of the development agreement in compliance with the MHD Application Procedure and Requirements. The agreement included in the packets is the most updated final draft and is currently being reviewed by the Village Planning and Zoning Director and the Village Attorney. Any minor changes to this agreement will be made prior to the meeting.

The development agreement shall be drafted in a format as directed by the Planning and Zoning Director. This draft was presented to the Planning Board for a formal recommendation at a regularly scheduled meeting. Said meeting shall be held prior to notification for a legislative hearing by the Village Council. The development agreement and the Planning Board recommendation were published for public inspection and notification was made in accordance with the provisions of G.S. 160D-601.

Consistency with Land Use Plan and Other Adopted Plans

State Statute requires that all zoning regulations shall be made in accordance with an adopted comprehensive plan. When adopting or rejecting any zoning amendment, the Council shall approve a statement describing whether its action is consistent or inconsistent with our 2020 Land Use Plan or any other officially adopted plan that is applicable, and briefly explain why the Council considers the action taken to be reasonable and in the public interest. A Planning Board/Village Council can adopt a rezoning that is inconsistent, as long as it's acknowledged in writing and there is rationale for the decision.

The Village of Marvin Land Use Plan and the Marvin Heritage District Small Area Plan designates this area as the Marvin Heritage District. It designates the subject property as Commercial Only within the Marvin Heritage District. The proposed uses and scale of the development is consistent with these adopted plans. Furthermore, this development is consistent with the goals and purpose of the Plans by providing conservation land or fee-in-lieu for future greenway connections, maintaining rural aesthetics, and economic development to the area.

Conclusion and Next Steps

The Planning Board has made a recommendation to the Village Council. The Village Council held the Public Hearing on August 8th, 2023, at 6PM at Village Hall. The Council closed the public hearing and tabled the discussion to this meeting. The Council will discuss the submittal, including the comments received at the public hearing and will vote on the rezoning application submittal.

The applicant has made minor amendments to their proposal, from comments, feedback, and recommendations made by the Planning Board during this review or can agree to make changes



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as part of Planning Boards Recommendations. All conditions discussed and recommended by Staff, and the Planning Board will be a part of the applicant's development agreement that is presented to Council when they are considering the application.

The Village Council shall take action on the rezoning petition. The Village Council shall have the authority to: Approve the application, deny approval of the application, or approve the application with modifications that are agreed to by the applicant; or send the application to the Planning Board for further study. The Village Council may hold additional public hearings on an application at any time before it takes a final vote to approve or deny that application.

If the rezoning sketch plan is approved by the Village Council the applicant can move forward with the following required steps:

Preliminary Plat and Construction Plans. After staff review, the Planning Board shall be required to make a recommendation on the preliminary plat/construction plans within 60 days after the date at which the Planning Board first met to review the plat. The Village Council shall then review the preliminary plat/construction plans. Both are reviewing compliance with the requirements of the ordinance and rezoning standards. The Council may be approved (with or without conditions) or deny the preliminary plat/construction plans. During the preliminary plat/construction plan review, elements of the plans may be approved by the Design Review Authority.

Land development permit: authorization to install improvements. Approval of the preliminary plat/construction plans by the Village Council shall be a prerequisite to the land development permit for the developer to install the required improvement in the proposed subdivision as required by the Village Council (this is horizontal work only, not vertical building construction). No clearing, land disturbing activity, or improvement of any kind shall commence until the preliminary plat/construction plan has been approved and Village staff has approved and issued a land development permit. The land development permit shall not be issued until all conditions, if any, on the approved preliminary plat/construction plan, are satisfied.

Design Review Authority. The design review authority shall review the plans prior to issuance of a zoning permit. The plans shall be in conformance with the development standards of the site. The design review process and submittal requirements were amended to allow a thorough review of the site plan, landscape plan, elevations and signage. The Design Review Authority has the ability to review plans to see if they violate any requirements of the Village's ordinances and/or Land Use Plan, including any requirements applicable to the particular conditional zoning district at issue; or cause the development not to be in harmony with its surrounding area or it is not otherwise within the spirit and intent of the village ordinances. A recommendation of approval or denial will be reviewed by Village Council at their next meeting.



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Proposed Land Use Consistency and Reasonableness Recommendation

Staff has currently drafted the following Land Use Consistency and Reasonableness statement for consideration of adoption by the Village Council.

The Village Council finds that the proposed rezoning of 9908 New Town Rd (further identified by parcel numbers 06-225009A), from R-Marvin Residential to the Marvin Heritage District (Commercial Only) is consistent with the goals and recommendations of the Village of Marvin 2020 Land Use Plan and the Marvin Heritage District Small Area Plan.

The Village of Marvin 2020 Land Use Plan designates this area as the Marvin Heritage District and the Marvin Heritage District Small Area Plan further designates the subject property as the Marvin Heritage District – Commercial Only.

The scale of the development is consistent with these adopted plans. Furthermore, this development is consistent with the goals and purpose of the plan by the following:

1. Cultivating a sense of community and creating a gathering place within the Heritage District (B.1 and D.1)
2. Maintaining rural character and heritage (B.2, C.1, D.2 and E.2)
3. Providing development adjacent to existing neighborhoods that is compatible in terms of intensity, scale, and architecture (C.2, D.6 and E.4)
4. Providing conservation land or fee-in-lieu for future greenway connections and additional pedestrian-oriented amenities (C.3, D.4 and E.3)
5. Creating a walkable, compact core of neighborhood-friendly commercial, retail and public uses and spaces (D.3)
6. Reuse of the existing single-family dwelling architecturally consistent with new and old development in the area maintaining rural aesthetics (D.5)
7. Proposing and further incorporation of appropriate traffic calming strategies (D.8)
8. Providing shared parking solutions/options and future vehicular connectivity within the district (D.9)

The proposed rezoning of 9908 New Town Rd (further identified by parcel numbers 06-225009A), from R-Marvin Residential to the Marvin Heritage District (Commercial Only) is reasonable and is in the public interest because it promotes the goals and recommendations of the adopted 2020 Land Use Plan, Marvin Heritage District Small Area Plan, and any other officially adopted plans.



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Staff Recommendation

Staff recommends the approval of the rezoning submission. Staff would like the Board to discuss potential conditions to be discussed and considered to be incorporated into the rezoning.

Staff have drafted the following recommended conditions. All conditions must be mutually agreed upon and included in the rezoning.

Recommend Conditions:

- Compliance with all the terms and conditions of the included Development Agreement.
- All NCDOT and Village traffic engineering comments and recommendations shall be considered with the Construction Documents – *Applicant has included this in their development agreement.*
- Consult with NCDOT on potential road improvements along New Town Road – *Applicant has included this in their development agreement.*
- Require a detailed lighting and landscape plan with construction documents to be reviewed by the Design Review Board and Village Council – *Applicant has included this in their development agreement.*
- Easement for Marvin Loop will be dedicated per the site plan to the Village – *Applicant has included this in their development agreement. Applicant will either construct its portion of the Marvin Loop in accordance to the Plans for the Marvin Loop Project (BL-0012) or pay in lieu its portion for the Village to construct as part of the Marvin Loop Project (BL-0012)*
- Require a maintenance plan and agreement for parking, landscaping, buffer, etc. – *Applicant has included this in their development agreement.*



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Planning Board Recommendation

The Planning Board reviewed and discussed the Conditional Rezoning Application CZ 2023-1 (Zepa Capital, LLC) during their regular scheduled Planning Board meeting on July 18th, 2023.

The Planning Board unanimously voted to recommend approval of Conditional Zoning Application 2023-1 with the following conditions:

- Remove the deviation allowing a trail connection; – *Applicant has included this in their development agreement and reflected the trail connection on the site plan.*
- Require a detailed lighting and landscape plan with construction documents to be reviewed by the Design Review Board and Village Council – *Applicant has included this in their development agreement.*
- Consider fee-in-lieu or potential improvements of the Marvin Loop to be installed by developer – *Applicant has included this in their development agreement.*
- Easement for Marvin Loop will be dedicated per the site plan to the Village; – *Applicant has included this in their development agreement.*
- Consult with NCDOT on potential road improvements (right turn stacking) along New Town Road – *Applicant has included this in their development agreement.*
- Require a maintenance plan and agreement for parking, landscaping, buffer, etc.; – *Applicant has included this in their development agreement.*
- Remove rear parking spaces and increase rear buffer if extra parking is secured from neighboring properties – *Applicant has included this in their development agreement. If additional permanent parking is secured on adjacent properties, the applicant will consider removing the parking spots along the rear buffer and increasing the buffer 18FT.*
- Require front area to be fenced if used for recreation – *Applicant has included this in their development agreement.*