



June 3, 2022

910 254-0900
910 341-3264 fax
wilmingtonnc.gov
Dial 711 TTY/Voice

CONSTRUCTION RELEASE
Vivo Apartments - 4903 Market Street
Project # 2021069

Consultant/ Kimley-Horn
Agent: Mr. Spencer Spraker
445 24th Street, Suite 200
Vero Beach, FL 32960

Property Owner: VIVO LIVING WILMINGTON LLC
841 APOLLO AVE SUITE 325
BEVERLY HILLS CA 90212

The City thanks you for your investment in our community and we look forward to working with you towards the construction of a quality development project. Your project is hereby conditionally released for construction. Please make note of the conditions for this release as they appear below. These conditions must be followed and met for the construction to be approved.

Conditions of Release

1. A pre-construction meeting must be held between the site contractor/superintendent and city staff prior to any site work, tree removal, clearing or grading commences on site. Failure to comply will result in civil penalties. Please contact our zoning office at 910.254.0900 to schedule the preconstruction meeting.
2. Any trees, including the critical root zone area and/or the area designated to be saved, must be properly barricaded or marked with fencing and protected throughout construction to ensure that no clearing or grading will occur in those areas.
3. No equipment is allowed on the site and no construction of any building, structure, wall, utilities, infrastructure, etc. of any kind, including footings and building slabs, will be permitted until:
 - a. All tree protection fencing and silt fencing has been installed
 - b. Cape Fear Public Utility Authority has authorized the water and sewer activities
 - c. The assigned city zoning compliance officer has authorized the activity
4. This development shall comply with all local, regional, state, and federal development regulations. All applicable City of Wilmington Technical Review Committee requirements must be completed prior to the issuance of final zoning approval.
5. All truck traffic to and from the site shall adhere to NCDOT and City of Wilmington truck routes and restrictions (e.g. S. 3rd Street, Market Street). See city GIS gallery for routes, weight restrictions, etc.
6. Failure to comply with the above conditions may result in the issuance of a Stop Work Order (SWO).



Conditions of Final Zoning Approval

1. A final inspection is required by City of Wilmington Engineering personnel (910) 341-5856.
2. Prior to a final inspection, a walkthrough with City Construction Management staff shall take place to verify completeness of site work in right(s)-of-way. Any material test reports and stormwater videos as required shall be submitted prior to and approved by city Engineering. Please contact the City Engineering Department at 910.341.0094.
3. No construction activity shall occur within the North Carolina Department of Transportation (NCDOT) right-of-way until all NCDOT permits have been issued and received by the City. All improvements required shall be installed and approved by NCDOT prior to issuance of a certificate of occupancy.
4. Contractor shall submit a Radio Signal Strength Study for all commercial buildings that demonstrates that existing emergency responder radio signal levels meet the requirements of Section 510 of the 2018 NC Fire Code.
5. This project is proposing less than 500 linear feet of right-of-way or public improvements. Per Chapter V of the City Fee schedule, the project will require Engineering inspection fees in the amount of \$250. This fee must be paid prior to issuance of plat recordation of certificate of occupancy. Please contact City Engineering at 910.341.0094 for payment options.
6. Approval of a major or minor site plan shall expire after 18 months from the date of such approval if the applicant has failed to make substantial progress on the site. The technical review committee may grant a single, six-month extension of this time limit for major and minor site plans, for good cause shown, upon receiving a request from the applicant before the expiration of the approved plan. In the event approval of a site plan has expired, for whatever reasons, the owner and/or applicant will be required to resubmit for approval of a site plan that meets current development standards unless otherwise noted in this chapter.
7. To obtain a final zoning inspection for this construction project, the appropriate departments within the City of Wilmington must perform and approve final inspections. To arrange for inspections please contact the assigned Zoning Enforcement Officer, at 254-0900. Staff will coordinate the inspections and provide a punch-list to the Developer within 5 working days. Upon correction of the punch-list items, a final inspection will be performed. *Note: Zoning will not issue final approval until all requirements of the City of Wilmington are fulfilled.*
8. Please also be advised that any party aggrieved by the issuance of this approval may file a notice of appeal to the City Clerk within 30 days of receipt of active or constructive notice of this decision. It shall be presumed that all persons with standing to appeal have constructive notice of the decision from the date a sign containing the words "Zoning Decision" or "Subdivision Decision" in letters at least six inches high and identifying the means to contact an official for information about the decision is prominently posted on the property that is the subject of the decision, provided the sign remains on the property for at least 10 days. Posting of signs is



not the only form of constructive notice. Any such posting shall be the responsibility of the landowner or applicant. Verification of the posting shall be provided to the official who made the decision. Absent an ordinance provision to the contrary, posting of signs shall not be required. Reference NC GS 160d-403.

9. Please notify New Hanover County Building Inspections of this release.

6/3/22

Project Planner:

Jeff Walton, Associate Planner

Date

I hereby acknowledge receipt of this construction release and understand and agree to adhere to all conditions as contained herein. The owner/developer assumes all risks and penalties with any delay or stop work order associated with a violation of this release. The City of Wilmington assumes no liability for any costs associated with this construction release.

Authorized Representative

Date

Zoning Compliance Officer:

Traci Lunceford, Compliance Officer

Date

The following items are included in this release package:

Item	Permit Number	Date
Vivo Apartments Approved Plans	2021069	5/31/22
City of Wilmington Tree Permit	TPP-22-089	6/3/22
Alternative Parking Plan Approval	Letter	1/27/22
Conditional District Ordinance and County Consent Order	CD-6-921	10/5/21

Copy: Traci Lunceford
 Bret Russell
 Rob Gordon
 Jim Quinn
 Aaron Reese
 Rich Christensen
 Eric Seidel
 Trent Butler
 Chris Elrod
 Chris Walker
 Brian Blackmon
 Jim Sahlie

Zoning Compliance
 Construction Manager
 Engineering (email only)
 Stormwater Specialist (email only)
 Urban Forestry (email only)
 Engineering (email only)
 Engineering (email only)
 Engineering (email only)
 Wilmington Fire Department (e-mail only)
 Wilmington Fire Department (e-mail only)
 Surveyor (e-mail only)
 GIS Addressing (e-mail only)



Bill McDow
Mitesh Baxi
Denys Vielkanowitz
Bernice Johnson
Beth Easley Wetherill
Michelle Hutchinson
Amy Beatty
Davina Bell
Joan Mancuso
Catherine Meyer
Shawn Evans
Courtney Salgado
Joseph Wurzel
Nick Drees
Jon Roan
Ben Hughes

Traffic Engineering (e-mail only)
Traffic Engineering (e-mail only)
Traffic Engineering (e-mail only)
CFPUA (e-mail letter only)
NHC Erosion Control (e-mail only)
GIS Engineer (e-mail only)
Community Services (e-mail only)
Community Services (e-mail only)
City Zoning (email only)
City Zoning (email only)
City Attorney's Office (email only)
City Attorney's Office (email only)
NC DOT (email only)
NC DOT (email only)
NC DOT (email only)
NC DOT (email only)



Department of Planning and Development
Phone: 910 254-0900 | Fax: 910 341-3264
Dial 711 TTY/Voice
305 Chestnut Street | PO Box 1810

APPROVED: _____

DENIED: _____

PERMIT #: TPP-22-089

Application for Tree Removal from Private Property

Name of Applicant: Jennifer Brooks, Urbanest C Phone: 949.922.2456 Date: 12.20.2021

Name of Property Owner: Vivo Living Wilmington, LLC Phone: 310.699.2983

Property Owner Address: 841 Apollo St., Suite 325, El Segundo, CA 90245

Email address for permit to be sent: jennifer@urbanestgroup.com

Address of Proposed Tree Removal: 4903 Market St., Wilmington, NC 28405

Description and location of tree(s) to be removed & reason for removal (provide attachment if necessary and tag tree(s) on site):

1. Four unidentified trees and one Sabal Palm to be removed along the southeastern fence on site. Reason for removal: Dead Trees
2. One Crape Myrtle to be removed on the right side entrance of the building. Reason for removal: Site Changes
3. _____

Description of replacement trees:

The four unidentified trees and one Sabal Palm are to be replaced by two American Sycamores planted at a 2" minimum caliper.

I, Jennifer Brooks, certify that the property owner has given me permission to apply for this permit on his/her behalf.

Applicant Signature: *Jennifer Brooks* Date: 12/20/2021

*****FOR OFFICIAL USE ONLY*****

Reviewed by: _____ Date _____

Remarks: **APPROVED**
By Jeff Walton at 12:07 pm, Jun 03, 2022

RECEIVED
By waltonj at 2:56 pm, Dec 21, 2021

ALL WORK MUST BE IN COMPLIANCE WITH THE CITY LAND DEVELOPMENT CODE, Section 18-317

NEW CONSTRUCTION: ____ EXPANSION: ____ OTHER: ____ PAID: _____

Tree preservation permit fees

Less than 1 acre	\$25.00
1-5 acres	\$50.00
5-10 acres	\$100.00
Greater than 10 acres	\$150.00

******IF MITIGATION IS REQUIRED, CONTACT THE ZONING DEPARTMENT AT (910) 254-0900 TO DISCUSS A PLANTING SCHEDULE******

Application can be mailed, emailed to: zoning@wilmingtonnc.gov or dropped off at our office. No tree removal shall occur until permit application has been reviewed and approved by City Staff. Failure to comply shall result in enforcement action, including civil penalties.



Planning and Development
Planning Division
305 Chestnut Street
PO Box 1810
Wilmington, NC 28402-1810

910 254-0900
910 341-3264 fax
wilmingtonnc.gov
Dial 711 TTY/Voice



ZONING VERIFICATION FORM

Date: January 27, 2022

Re: VIVO Apartments – 4903 Market Street (CD-6-921)

To Whom It May Concern:

This letter is verification that the proposed VIVO Apartments project, located at 4903 Market Street is a parcel of property located in the City of Wilmington, New Hanover County, State of North Carolina. The property is zoned MF-H(CD) Multiple-family High-density (Conditional District), is vested under the previous Land Development Code, and the tax parcel identification number is R04915-001-008-000.

According to Sec. 18-528 (h) of the City of Wilmington Land Development Code, the applicant may apply for an alternative parking plan proposal to allow fewer off-street parking spaces than required. Alternative parking plans shall be submitted in a form established by the city manager and made available to the public. At a minimum, such plans must detail the type of alternative proposed and the rationale for such a proposal. The technical review committee (TRC) is authorized to review and act on alternative parking plans.

On October 4, 2021, the applicant submitted an alternative parking study to the TRC for a parking reduction consideration. At the formal TRC plan review meeting on January 27, 2022, TRC accepted and approved the alternative parking plan proposal, based on the alternative travel recommendations. The minimum parking requirements have been approved for reduction.

Please contact our office for any further questions at 910-254-0900.

Sincerely,

Jeff Walton
Project Manager, Technical Review Committee

Parking Study

For VIVO Apartments
Wilmington, North Carolina

Prepared By:

Cynthia A. Wolf
d.b.a. Design Solutions
107 Stokley Drive
Wilmington, North Carolina 28403
Telephone: 910-620-2374
Email: cwolf@lobodemar.biz

October, 2021



Cynthia A. Wolf

10/04/21

APPROVED

By Jeff Walton at 11:54 am, Jan 27, 2022

Introduction:

Both land use and site location are important factors in determination of parking needs. Historically parking generation data has been dominated by isolated, suburban sites. However, more recent urban infill development or adaptive reuse of existing structures can have reduced parking needs. These can be based on more current trends with mixture of uses, on-demand transportation services, ride-sharing, expanding public transit accessibility and promoting safer cycling opportunities.

Requirements:

The Wilmington Land Development Code Article 9. Sec. 18-532. Requires 1.5 spaces for a one-bedroom unit. The Code does not distinguish between definitions for one-bedroom, “studio” or “efficiency” – style apartments. Therefore, the parking requirement would calculate to 351 total spaces.

In comparison, other communities have adjusted their requirements:

- City of Raleigh, NC UDO - Chapter 7. Article 7.1. Parking / Multi-unit living: 0-1 bedroom ... 1 space required.
- Asheville, NC Code of Ordinances / Article XI. Sec. 7-11-2 Parking Standards / Dwellings, multi-family w/ 2 BR or less ... 1 space required.

Additionally, the American Planning Association (APA) Planning Advisory Service Report Number 5107511 – “Parking Standards” suggests that distinctions are often based on the number of bedrooms, location within the community, and whether the units serve senior, low-income or other special populations. Their recommendation is 1-1.2 spaces for a “Dwelling, apartment, efficiency unit,” and 1-1.5 spaces for a “Dwelling, apartment, one bedroom.”

Demography & Estimated Parking Demand:

The proposed project will include 234 “efficiency” apartments, defined as “a dwelling unit that has only one combined living / sleeping room, and a separate room containing only sanitary facilities.” In practice, as compared to the industry’s description of a one-bedroom apartment, there is more typically only a single tenant, translating into the need for a single parking space.

The project developer has developed several other similar housing complexes throughout the Country. Their statistics yield that over 90% of the units are single-occupancy. 40% of the overall tenants are under the age of 30, and 40% are over the age of 55. Their estimate, from experience, is that approximately 20% of the residents use public transportation if it is easily accessible.

The complex will have all of the modern apartment amenities, such as a business center, community activities space, workout facilities, and pool, but by virtue of both the project location and the unit size, rents are generally considered more affordable to “work-force” and senior housing.

Alternative Travel Modes:

Walkability –

Several of the growth strategies and policies of the Create Wilmington Plan promote integrating residential development into existing commercial areas as a way to help reduce the reliance on motor vehicles, thereby translating into less parking needs. The Plan also promotes transit-oriented mixed-use centers. There is a multitude of shopping and eating establishments within easy walkability of the complex.

Public Transit –

The project location is centrally located within the City along four (4) public bus transit routes. There is a covered stop directly in front of the site, and a crosswalk at the Lullwater Drive traffic signal safely allows access to a route stop for WAVE travel in the opposite direction, along with pick up by the Seahawk Shuttle. Princess Place (101) and Market Street (108) both provide access between Padgett Station (Downtown) and Fordham Station (North College) transfer facilities, giving even broader access to the entire WAVE Transit System. Medical Center (105) accesses the hospital area and the regional shopping node at the intersection of Independence Boulevard with Oleander Drive. Shipyard Blvd. (106) also avails the shopping area, and takes you all the way across town to the State Port facility.

Bicycling –

The City's efforts to provide for safe cycling throughout the community are constantly adding to the variety and inter-connectivity of bike trails and other accommodations. The Code requires racks for a minimum of twenty (20) secure bicycle parking racks for the proposed project. The developer commits to trebling that number to sixty (60) spaces, or lockers, dispersed around the complex for easy access to the multiple entrances.

Uber / Lyft & Taxis -

On-demand and ride-sharing transportation services have become much more popular methods to convey a passenger from Point A to Point B. They allow residents that may not be able to afford a personal vehicle, or simply choose not to have one, to add to their alternatives for complete access around the City, or at-home delivery of a wealth of goods and services.

Parking Proposal:

The proposed project, with 234 "efficiency" apartments, provides 274 parking spaces, a ratio of 1.17 spaces per unit, or translation of one space per unit and an additional 40 spaces for overflow and/or guests. The complex is a for-rent facility and will have in-house management to oversee tenancy. The developer has the empirical justification, through past observation, that one space per unit and the additional forty spaces for guests is adequate to address this project's parking needs.

Allowing latitude to the Code's specific requirement, for this particular use, and in this specific location, would not adversely affect the spirit, purpose and intent of the Code nor pose a public safety issue.

Holton Place

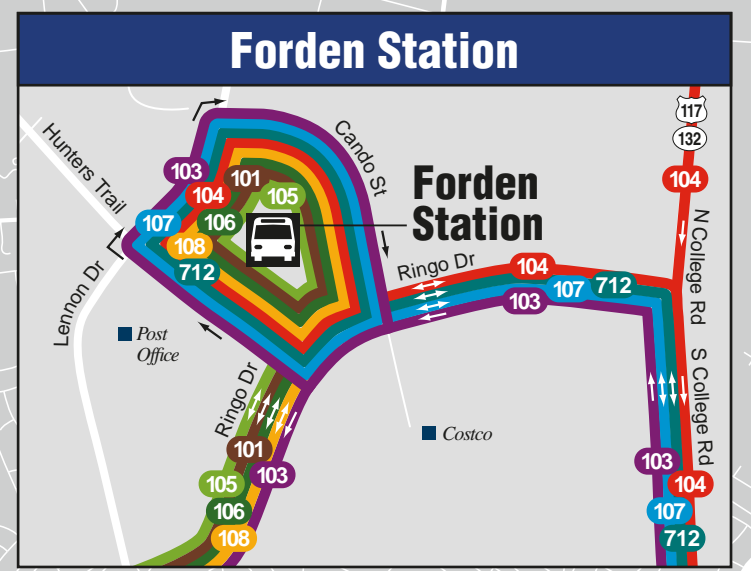
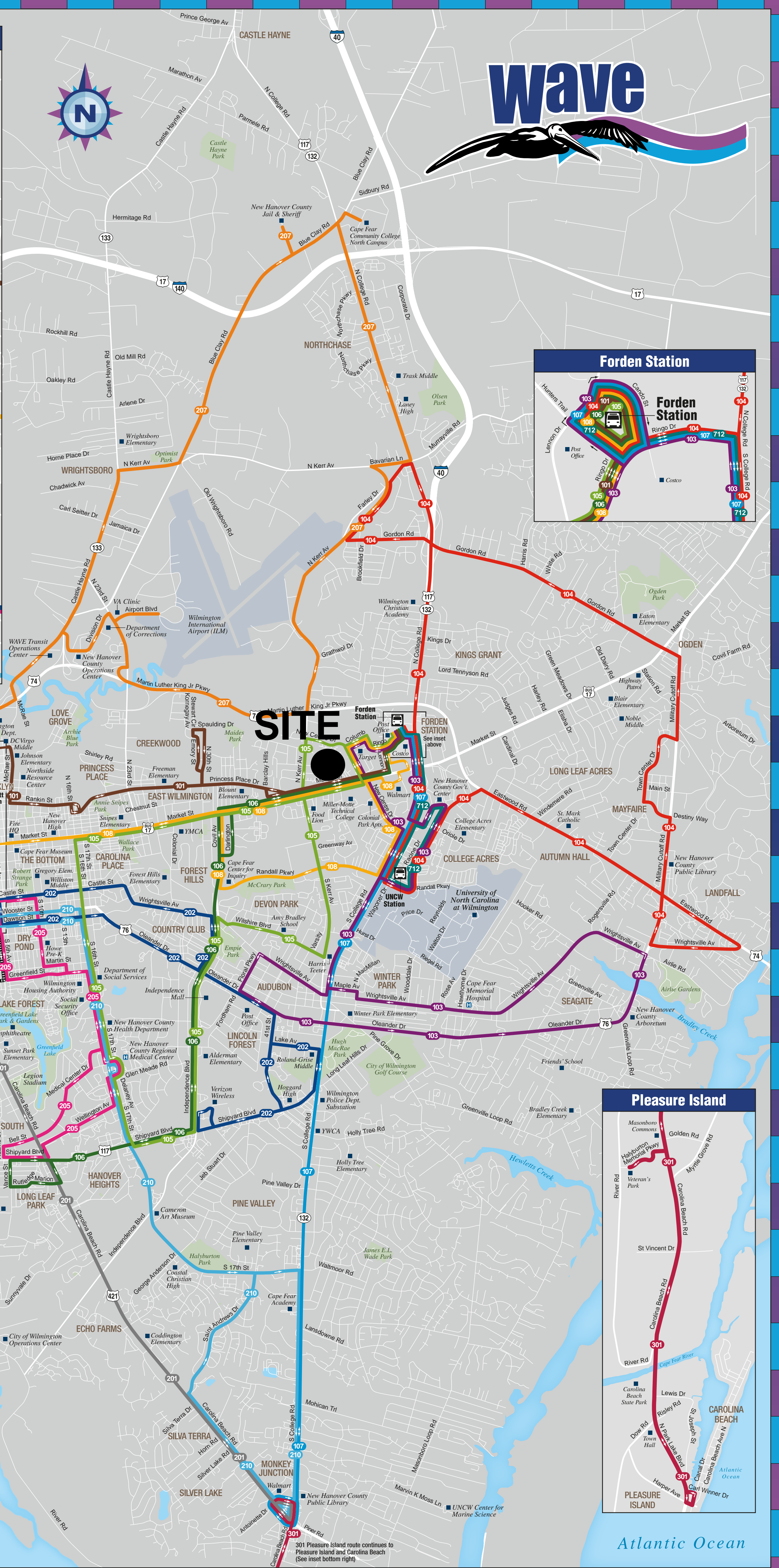
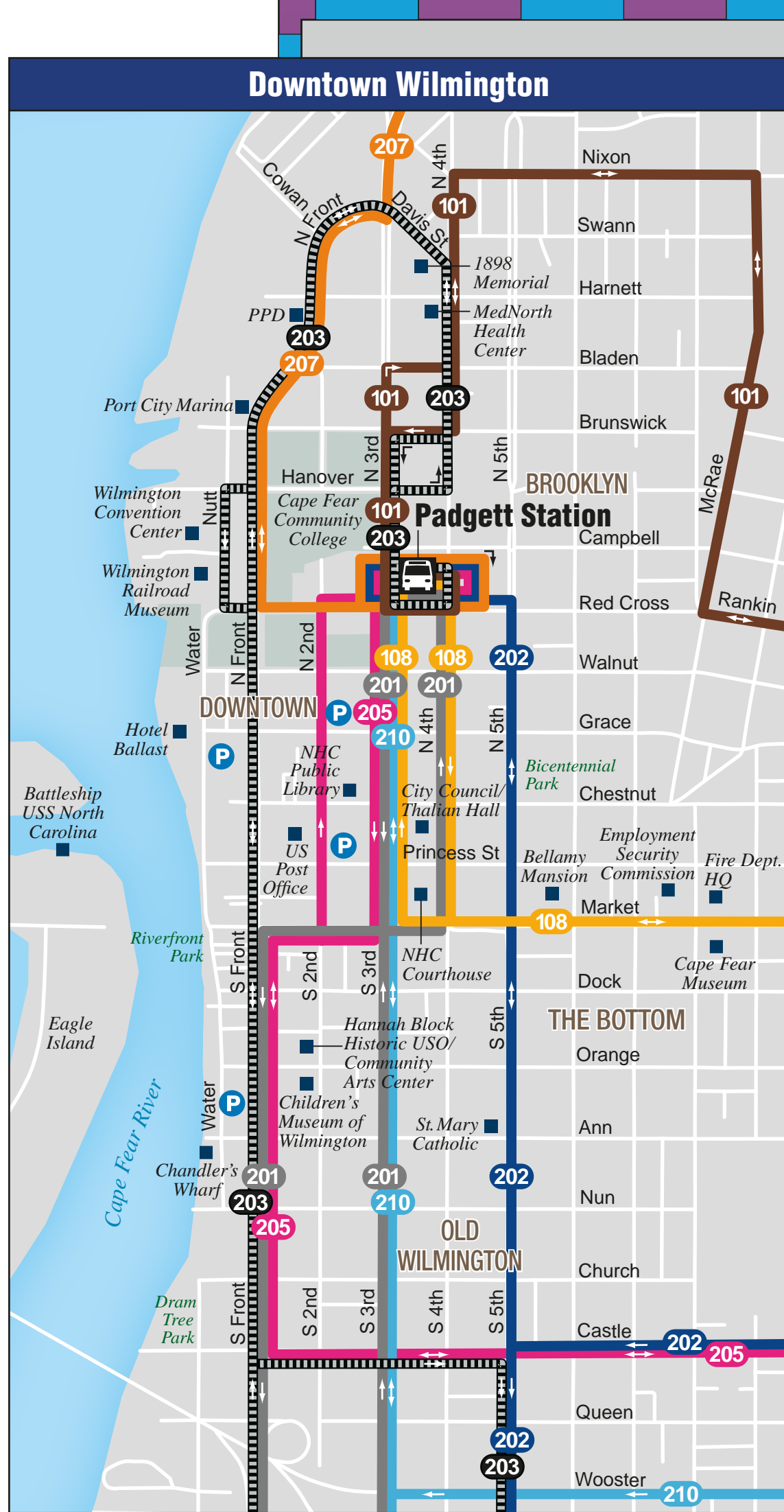
Abbots Run

VIVO
LIVING

Birchwood Drive

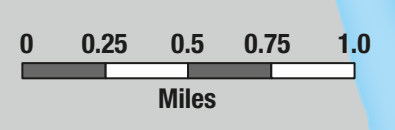
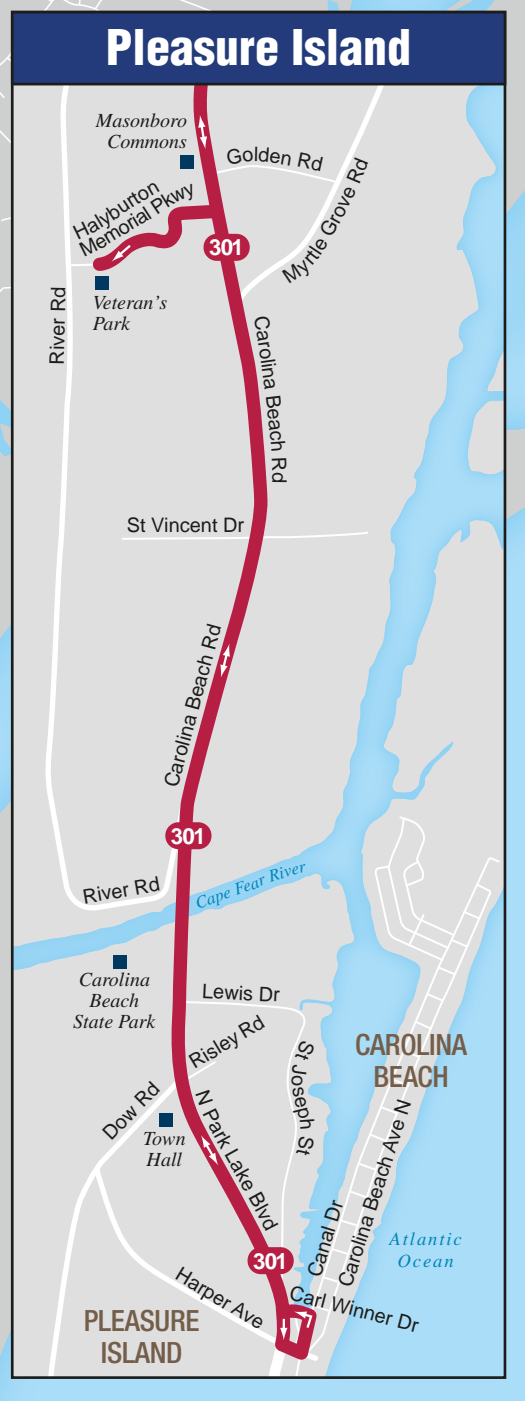
Market Street





- ### Wave Routes
- 101 Princess Place
 - 103 Oleander East
 - 104 Northeast
 - 105 Medical Center
 - 106 Shipyard Blvd
 - 107 College Road
 - 108 Market Street
 - 201 Carolina Beach Road
 - 202 Oleander West
 - 203 Port City Trolley
 - 205 Long Leaf Park
 - 207 North
 - 210 South 17th Street
 - 301 Pleasure Island
 - 712 UNCW Teal

- ### Legend
- Bus Route
 - Transit Station
 - Landmark
 - Public Parking Deck
 - Hospital
 - Interstate
 - US Highway
 - State Highway



© 2021 Wave Transit
Design by Smartmaps, Knoxville, TN

SITE

301 Pleasure Island route continues to Pleasure Island and Carolina Beach (See inset bottom right)

Atlantic Ocean



Development Services
Planning Division
305 Chestnut Street
PO Box 1810
Wilmington, NC 28402-1810



910 254-0900
910 341-3264 fax
www.wilmingtonnc.gov
Dial 711 TTY/Voice

October 15, 2021

Design Solutions
Cindee Wolf
P. O. Box 7221
Wilmington, NC 28406

Ref: 4903 Market Street
Case No: CD-6-921

On October 5, 2021, the Wilmington City Council approved your Conditional District request to rezone property located at 4903 Market Street from RB, Regional Business to MF-H(CD) Multiple-family High-density (Conditional District) to allow the conversion of an existing 224-room hotel to a 234-unit apartment complex.

A copy of the signed Conditional District Ordinance rezoning this property is enclosed. Please call our office at 254-0900 if you have any questions concerning this matter.

Sincerely,

Jeff Walton
Associate Planner

Enclosure

c: City Clerk
Code Enforcement Office
GIS Planner
NHC Tax Administrator
City Attorney's Office

Ordinance



City Council
City of Wilmington
North Carolina

Introduced By: Anthony N. Caudle, City Manager

Date: 10/5/2021

Ordinance Amending the Official Zoning Map of the City to Rezone Property Containing 7.719 Acres of Land Located at 4903 Market Street, From RB, Regional Business to MF-H(CD) Multiple-Family High-Density (Conditional District) for a 234-Unit Apartment Complex (CD-6-921)

LEGISLATIVE INTENT/PURPOSE:

WHEREAS, NCGS §§ 160D-102, 160D-108(d), 160D-603, and 160D-702 authorizes local governments to change or modify zoning boundaries within their jurisdiction; and

WHEREAS, the amendment set out below is made in accordance with NCGS § 160D-601 and Article 3, Section 18-117 of the Wilmington Land Development Code.

THEREFORE, BE IT ORDAINED:

SECTION 1: The Official Zoning Maps of the City of Wilmington are hereby amended by removing the hereinafter described tract of land from the present RB, Regional Business and putting it in the MF-H(CD) Multiple-family High-density (Conditional District) classification, said tract being more particularly described as follows:

Legal Description for Conditional Rezoning of 4903 Market Street

Beginning at a point in the northern boundary of Market Street (U.S. Highways No. 17 & 74), a 100' public right-of-way; said point being located approximately 272 feet eastwardly as measured along said line of the right-of-way from its intersection with the eastern boundary of Birchwood Drive; and running thence from the point of beginning: North 27017'50" West, 1084.03 feet to a point; thence South 84023'55" East, 310.63 feet to a point; thence North 14004'30" East, 118.82 feet to a point; thence South 27015'50" East, 952.44 feet to a point; thence South 62052'57" West, 125.04 feet to a point; thence South 22011'59" East, 114.63 feet to a point in the northern boundary of Market Street; thence with that right-of-way, South 77040'49" West, 177.79 feet to a point; thence South 89006'46" West, 35.53 feet to the point and place of beginning, containing 336,248 square feet, or 7.719 acres, more or less.

SECTION 2: The following rules, regulations, and conditions shall apply to the property described in this ordinance:

CITY CLERK
CERTIFIED TO BE A TRUE COPY
Thelma Spar-Sibany

1. The use and development of the subject property shall comply with all regulations and requirements imposed by the Land Development Code, the City of Wilmington Technical Standards and Specifications Manual and any other applicable federal, state or local law, ordinance or regulation, as well as any condition stated below. In the event of a conflict, the below parking standards (#6 and #15) shall control, otherwise the more stringent requirement or higher standard shall apply.
2. Approval of this conditional district rezoning does not constitute technical approval of the site plan. Final approval by the Technical Review Committee and the issuance of all required permits must occur prior to release of the project for construction.
3. If, for any reason, any condition for approval is found to be illegal or invalid or if the applicant should fail to accept any condition following approval, the approval of the site plan for the district shall be null and void and of no effect and proceedings shall be instituted to rezone the property to its previous zoning classification.
4. The use and development of the subject property shall be in substantial accordance with the site plan as submitted and approved.
5. The proposed use shall be limited to 234 residential units and a 10,500 square foot office and amenity area.
6. A minimum of 274 off-street parking spaces shall be provided.
7. A minimum of 10% of the total number of residential units shall be designated for workforce housing, as defined under HUD's High HOME rent census data.
8. Workforce housing units shall be dispersed throughout the site and not concentrated in one area. The interior finishes, unit size and equipment within workforce units shall be the same as market rate units.
9. The minimum number of workforce housing units shall be maintained for a period of no less than 15 years and shall begin on occupancy of the final workforce housing unit on site.
10. An annual report will be submitted to the city that provides income verification and lease terms for the workforce housing units.
11. Exterior site lighting shall be installed so as not to shine directly onto adjacent residential parcels.
12. The use of pine straw as ground cover shall be prohibited within ten (10) feet of any combustible exterior construction.
13. Any freestanding sign(s) on the site shall be monument style with landscaping around the base of the sign; no pole signs shall be permitted.
14. The creative standard shall not be used to satisfy the streetyard landscaping requirements.
15. An alternative parking plan shall be approved by the TRC prior to construction release.
16. The property shall comply with the New Hanover County Superior Court Consent Judgment and Final Order of Abatement, 16 CVS 2394, filed in New Hanover County Superior Court on July 18, 2016, unless amended by court action in the future.
17. The existing driveway located at the southwest corner of the site on Market Street shall be closed and curb and gutter restored to Market Street.
18. The applicant shall provide a minimum 18-foot wide streetyard along Market Street and a paved/striped pedestrian connection from the public sidewalk to the front of the existing building.

- 19. All existing bufferyards and existing vegetation shall remain.
- 20. All city, state, and federal regulations shall be followed.

SECTION 3: The City Clerk and the Planning Director are hereby authorized and directed under the supervision of the City Manager to change the Zoning Maps on file in the office of the City Clerk and the Planning Division, to conform with this ordinance.

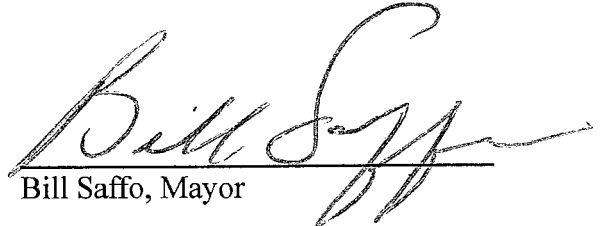
SECTION 4: That any person violating the provisions of this ordinance, including the approved site plan, shall be subject to the penalties set forth in Section 18-52 of the Land Development Code.

SECTION 5: All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed to the extent of such conflict.


SECTION 6: If any section, subsection, paragraph, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed severable and such holding shall not affect the validity of the remaining portions hereof.

SECTION 7: That this ordinance shall be effective upon its adoption by City Council, and the City's receipt of written acceptance by the Applicant of all conditions adopted by the City.


Adopted at a regular meeting
on October 5, 2021


Bill Saffo, Mayor

ATTEST:


Penelope Spicer-Sidbury, City Clerk

APPROVED AS TO FORM:


John D. Jaze
City Attorney



11
200

BK: RB 5986

PG: 2402-2413

RECORDED:
07-19-2016

03:26:47 PM

BY: ANDREA CRESWELL
ASSISTANT



2016022468

NEW HANOVER COUNTY, NC

TAMMY THEUSCH BEASLEY

REGISTER OF DEEDS

NC FEE \$26.00

In the Matter of:

State of North Carolina v. Hotel Plus, LLC, Premier Hotels, LLC,
Sanjeev Badhiwala, Hita Badhiwala, and Yadkin Bank
New Hanover County - 16 CVS 2394
Consent Judgment and Final Order of Abatement

For the following properties:

Hotel Plus, LLC, Owner of property located at
4903 Market Street, Wilmington, NC
#R04915-001-008-000
Via Deed Book 4395, Page 274

Premier Hotels, LLC, Owner of property located at
4118 Market Street, Wilmington, NC
#R04914-005-012-000
Via Deed Book 4494, Page 487

AT

STATE OF NORTH CAROLINA
COUNTY OF NEW HANOVER

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
16 CVS 2394

STATE OF NORTH CAROLINA
NEW HANOVER COUNTY

FILED
CLERK OF SUPERIOR COURT
NEW HANOVER COUNTY

On Relation of
Benjamin R. David
District Attorney of the Fifth
Prosecutorial District at

JUL 18 2016

By
Plaintiff

10:40
HB

am/pm
Dep/Asst CSC

CONSENT JUDGMENT
AND FINAL ORDER OF
ABATEMENT

v.

HOTEL PLUS, LLC, a North Carolina
Limited Liability Corporation;
PREMIER HOTELS, LLC, a North
Carolina Limited Liability Corporation;
SANJEEV BADHIWALA;
HITA BADHIWALA;
YADKIN BANK, a North Carolina
Chartered Commercial Bank,

Defendants.

CERTIFIED TRUE COPY FROM ORIGINAL
Clerk of Superior Court, New Hanover County
By Heather Jones
Assistant, Deputy Clerk of Superior Court
Date 7-19-16

THIS CAUSE was heard by the undersigned Judge presiding over the July 18, 2016 session of the Superior Court of New Hanover County, upon joint motion of the Plaintiff and Defendants for an Order of Abatement and Final Injunction. The Court, having reviewed the Complaint and verified affidavits hereinbefore filed, and having heard statements of Meredith T. Everhart, Counsel for Plaintiff, statements of Donald E. Britt, Jr., Counsel for Sanjeev Badhiwala, Hita Badhiwala, Hotel Plus, LLC, and Premier Hotels, LLC, and statements of Charles N. Anderson, Jr., Counsel for Yadkin Bank, that all matters of controversy set out in the pleadings and relating to Defendants have been agreed upon by said parties, makes the following Findings of Fact:

FINDINGS OF FACT

1. A civil action was commenced in this matter upon the filing of a verified complaint on July 18, 2016 and the Defendants properly served.
2. The subject real properties of this action are located within New Hanover County.
3. The Court has jurisdiction over the parties and the subject matter involved in this action pursuant to N.C. Gen. Stat. §19-1 *et seq.*
4. Plaintiff is now the duly elected, qualified, and acting District Attorney of the Fifth Prosecutorial District of North Carolina, which includes New Hanover County, and is specifically empowered pursuant to the provisions of North Carolina General Statute §19-2.1 to bring this action.
5. Hotel Plus, LLC, is the deeded owner of the property currently housing the business known as the Budgetel Inn, located at 4903 Market Street, Wilmington, New Hanover County, North Carolina. The Budgetel Inn property is described in the Deed duly recorded in the Deed Book 4395, Page 274 in the Office of the New Hanover County Register of Deeds.
6. Premier Hotels, LLC, is the deeded owner of the property currently housing the business formerly known as the Travelodge and currently known as the Red Carpet Inn ("Red Carpet Inn"), located at 4118 Market Street, Wilmington, New Hanover County, North Carolina. The Red Carpet Inn property is described in the Deed duly recorded in the Deed Book 4494, Page 487 in the Office of the New Hanover County Register of Deeds.

7. Hotel Plus, LLC, and Premier Hotels, LLC, are limited liability corporations organized and existing under the laws of the State of North Carolina with their principal offices and places of business located in New Hanover County, North Carolina.
8. Sanjeev Badhiwala is a member/manager and the registered agent of Hotel Plus, LLC, and Premier Hotels, LLC.
9. Sanjeev Badhiwala oversees the daily operations of the Budgetel Inn and Red Carpet Inn.
10. Hita Badhiwala is a member/manager of Hotel Plus, LLC.
11. Hita Badhiwala is a member of Premier Hotels, LLC.
12. While Defendants Sanjeev Badhiwala, Hita Badhiwala, Hotel Plus, LLC, and Premier Hotels, LLC, all deny that any of their officers had prior knowledge of or acquiesced in or participated in any activities on the properties described herein which might constitute a nuisance, Defendants Sanjeev Badhiwala, Hita Badhiwala, Hotel Plus, LLC, and Premier Hotels, LLC admit the existence of a nuisance on the properties described herein as prohibited by N. C. Gen. Stat § 19-1 *et seq.*
13. Defendants Sanjeev Badhiwala, Hita Badhiwala, Hotel Plus, LLC, and Premier Hotels, LLC, knew or through reasonable diligence should have known that the properties described herein have been used for the purposes of a nuisance as prohibited by Chapter 19 of the North Carolina General Statutes.
14. Defendant Hotel Plus, LLC, is the maker of a Deed of Trust dated July 9, 2008, to the order of Crescent State Bank in the original principal amount of

\$3,800,000.00. The Deed of Trust was duly recorded on July 9, 2008, in Book 5330, Page 474, in the Office of the New Hanover County Register of Deeds.

15. Defendant Premier Hotels, LLC, is the maker of a Deed of Trust dated July 10, 2008, to the order of Crescent State Bank in the original principal amount of \$2,200,000.00. The Deed of Trust was duly recorded on July 10, 2008, in Book 5330, Page 1031, in the Office of the New Hanover County Register of Deeds.

16. Yadkin Bank is the successor-in-interest to Crescent State Bank and is the current legal holder of the two Deeds of Trust referenced above.

17. Plaintiff alleges no wrong doing on the part of Defendant Yadkin Bank.

18. All parties consent to the entry of this Order.

19. All parties consent to the entry of this Order out of term.

WHEREFORE, based upon the foregoing Findings of Fact, the court makes the following:

CONCLUSIONS OF LAW:

1. The Court has jurisdiction over the parties and the subject matter involved in this action.

2. Defendants' Sanjeev Badhiwala, Hita Badhiwala, Hotel Plus, LLC, and Premier Hotels, LLC's, continued ownership, maintenance, and leasing of the two properties described herein as presently used constitutes a nuisance as the term is defined in Chapter 19 of the North Carolina General Statutes which may be abated as provided therein.

3. Chapter 19 of the North Carolina General Statutes provides for the abatement of public nuisances as described herein.

4. The public nuisances complained of herein shall be abated in their entirety as provided for in Chapter 19 of the North Carolina General Statutes.

5. Defendant Yadkin Bank holds a mortgage interest in the two parcels of real estate which are the subjects of this action and therefore is a proper party to this action.

IT IS therefore ORDERED, ADJUDGED and DECREED that:

1. The Defendants and all other persons are perpetually enjoined from maintaining a nuisance upon the property currently housing the business known as the Budgetel Inn, located at 4903 Market Street, Wilmington, New Hanover County, North Carolina, together with and including all buildings and improvements thereon.

2. The Defendants and all other persons are perpetually enjoined from maintaining a nuisance upon the property currently housing the business known as the Red Carpet Inn, located at located at 4118 Market Street, Wilmington, New Hanover County, North Carolina, together with and including all buildings and improvements thereon.

3. Defendants Sanjeev Badhiwala, Hita Badhiwala, Hotel Plus, LLC, and Premier Hotels, LLC, are perpetually enjoined from maintaining a public nuisance elsewhere within the jurisdiction of the state of North Carolina.

4. Defendants Sanjeev Badhiwala, Hita Badhiwala, Hotel Plus, LLC, and Premier Hotels, LLC, their officers, agents, servants, and employees are hereby prohibited and restrained from engaging in any act upon the properties described herein which violate the laws of the federal, state, or local government.

5. Unless such inspection has already been completed within 30 days prior to the entry of this Order, within 30 days after the entry of this Order, Defendants Sanjeev Badhiwala, Hita Badhiwala, Hotel Plus, LLC, and Premier Hotels, LLC, shall consent to a full inspection of the properties described herein, by the City of Wilmington Fire Marshall, to determine compliance with the North Carolina State Building Code and other applicable local ordinances and State regulations. If any violations of the applicable local ordinances and state regulations (as such code, ordinances, or regulations existed at the time of construction of the motel) are found, they shall be reported to all parties in this action. The properties shall be brought into compliance with such code or other applicable ordinances or regulations within thirty (30) days' written notice of such violations; provided, however, Defendants Sanjeev Badhiwala, Hita Badhiwala, Hotel Plus, LLC, and Premier Hotels, LLC, shall immediately correct any safety to life issues which are reported in a written notice given pursuant to this Section 5.

6. As long as a motel, hotel, or other lodging facility is operated upon either of the properties described herein, the Defendants and any future owners shall:

- A. Require all guests to present a photograph form of government issued identification at the time of check-in;
- B. Require all guests to present a valid credit card bearing the same name as on the government issued identification card used at the time of check-in;
- C. Require all registered guests to complete a registration card with information including but not limited to the guest's full name, home address, vehicle license plate information, vehicle description, time of arrival, and number of assigned room;
- D. Keep a hotel guest registry available for inspection by any law enforcement officer;
- E. Issue parking permits to be displayed for all vehicles of registered guests; Vehicles parked upon either of the properties described herein

without said permit properly displayed shall be promptly towed at the vehicle owner's expense;

- F. EITHER 1) Employ at least one private licensed security guard between the hours of 9:00 PM and 6:00 AM each day on the premises of each of the properties described herein to ensure compliance with the laws of the state and local government; OR 2) Install and maintain a minimum of 32 video surveillance cameras on both properties described herein. The video surveillance cameras and supporting system shall be interactive, capable of recording all areas accessible to the public and storing video recordings for a minimum of seven days, and capable of being monitored in real time by employees of the properties described herein and employees of the Wilmington Police Department; and
- G. Employ at least one on-site manager 24 hours per day on each of the properties described herein to ensure compliance with the laws of the state and local government.

7. The Defendants Sanjeev Badhiwala, Hita Badhiwala, Hotel Plus, LLC, and Premier Hotels, LLC shall remove all abandoned vehicles and trash from the properties described herein.

8. Except to the extent allowed by paragraph 9 below for restaurants, eating establishments, and food businesses, as those terms are defined by state statute, Defendants Sanjeev Badhiwala, Hita Badhiwala, Hotel Plus, LLC, Premier Hotels, LLC, and all other persons, and entities are perpetually enjoined from operating on the Property any type of private club, as defined in N.C.G.S. 18B-1000, including a topless bar, lounge, night club, bar, dance club, disco, game room or similar business which may attract gatherings of people on and about the Property.

9. Defendants Sanjeev Badhiwala, Hita Badhiwala, Hotel Plus, LLC, Premier Hotels, LLC, shall not be enjoined from permitting the operation of the following establishments, as more fully defined in North Carolina General Statute 18B-1000, on the Property: 1) Restaurant; 2) Eating establishment; 3) Food business.

10. In the event that a restaurant or eating establishment is operated on either of the properties described herein, such establishment shall comply with all building codes and maintain a Class A sanitation rating.

11. The Defendants shall pay into the Clerk of Superior Court of New Hanover County, on or before July 30, 2016, a total of \$1,512.50 as payment of filing fees and costs for the investigation and prosecution of this action as provided by North Carolina General Statute §§ 19-6 and 19-8.

12. The costs of abatement in this matter as set out hereinabove shall be disbursed as follows:

- A. \$1,512.50 to the City of Wilmington, Attention Deputy City Attorney Meredith T. Everhart, P.O. Box 1810, Wilmington, North Carolina 28401.

13. The costs of abatement in this matter as set out hereinabove are a lien against the real properties used in conducting said nuisance until paid in full.

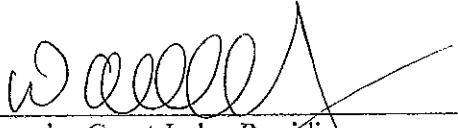
14. A violation of this Judgment shall be punishable as provided by the penalties in Chapter 19 Article 1, and any other provisions of the North Carolina General Statutes. All Defendants shall be deemed to have notice of hearing for a violation of this Order at the time that an Order to Show Cause for a violation of this Order is issued by a Judge of New Hanover County Superior Court and served on the Defendants, pursuant to Rule 4 of the North Carolina Rules of Civil Procedure.

15. With regard to the future use of the Property, there are no representations, warranties or other understandings between the Defendants and the State of North Carolina other than those set forth in this Order.

16. This Order shall become final and binding only upon signing by the parties and the Court, and may not be changed or modified except by order of the Court.

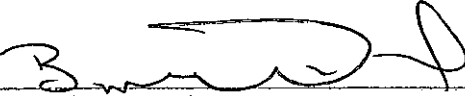
17. The Clerk of Court for the County of New Hanover shall docket this Order of Abatement and Final Injunction on the judgment docket of the Superior Court of New Hanover County.

ENTERED this 18th day of July, 2016.



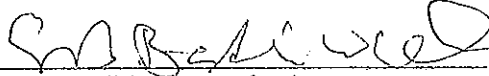
Superior Court Judge Presiding

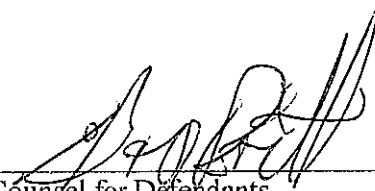
CONSENTED TO:


Benjamin R. David
District Attorney
Fifth Prosecutorial District
District Attorney's Office
New Hanover County Courthouse
Wilmington, NC 28401
(910) 341-1111

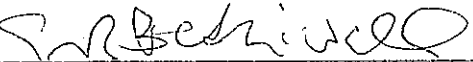

Meredith T. Everhart
Special Assistant District Attorney
Fifth Prosecutorial District
615 Bess Street
Wilmington, NC 28402
Telephone (910) 343-3600
State Bar Number 26704
Counsel for Plaintiff

CONSENTED TO:


Sanjeev Badhiwala, Defendant

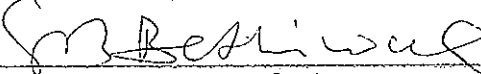

Counsel for Defendants

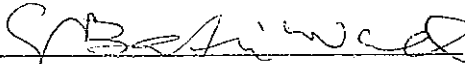

Hita Badhiwala, Defendant


Hotel Plus, LLC, Defendant

By: SANJEEV BADHIWALA

Title: Owner


Premier Hotels, LLC, Defendant

By: 

Title: Owner

Yadkin Bank, Defendant


Counsel for Defendant Yadkin Bank

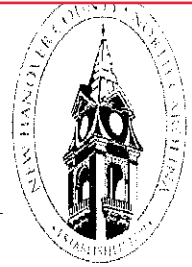
By: _____

Title: _____

TAMMY THEUSCH
BEASLEY
Register of Deeds

New Hanover County Register of Deeds

320 CHESTNUT ST SUITE 102 • WILMINGTON, NORTH CAROLINA 28401
Telephone 910-798-4530 • Fax 910-798-7751



State of North Carolina, County of NEW HANOVER
Filed For Registration: 07/19/2016 03:26:47 PM
Book: RB 5986 Page: 2402-2413
12 PGS \$26.00
Real Property \$26.00
Recorder: ANDREA CRESWELL
Document No: 2016022468

DO NOT REMOVE!

This certification sheet is a vital part of your recorded document. Please retain with original document and submit when re-recording.