

ORDINANCE NO. ORD-24-14

First Reading: July 15, 2024  
Public Hearing: August 19, 2024

Approved:  
Published:  
Effective:

3380 NIXON ROAD CONDITIONAL ZONING AMENDMENT

An ordinance to amend the zoning map, being a part of Section 5.10.2 of Chapter 55 of Title V of the Code of the City of Ann Arbor, (3380 Nixon Road Conditional Zoning – Owl Creek Phase 2)

The City of Ann Arbor ordains:

Section 1. THE ZONING MAP, which, by Section 5.10.2 of Chapter 55 of Title V of the Code of the City of Ann Arbor is made a part of said Chapter 55, shall be so amended as to designate the zoning classification of property described as follows:

That part of the Northeast  $\frac{1}{4}$  of the Southeast  $\frac{1}{4}$  of Section 10, Town 2 South, Range 6 East, Ann Arbor Township, Washtenaw County, Michigan, lying South of the South right of way line of US-23. EXCEPT, All that part of the Northeast  $\frac{1}{4}$  of the Southeast  $\frac{1}{4}$  of said Section 10, described as: Beginning at a point which is South 01 degrees 22 minutes 57 seconds East along the centerline of Nixon Road 1011.81 feet from the Northwest corner of the Northeast  $\frac{1}{4}$  of the Southeast  $\frac{1}{4}$  of said Section 10; thence North 88 degrees 37 minutes 03 seconds East, 50.00 feet; thence North 01 degrees 22 minutes 57 seconds West, 450.00 feet; thence North 88 degrees 37 minutes 03 seconds East, 25.00 feet; thence North 01 degrees 22 minutes 57 seconds West, 248.26 feet to a point on the Southerly right-of-way line of Highway US-23; thence Westerly along said right-of-way line, to the centerline of Nixon Road; thence South 01 degrees 22 minutes 57 seconds East, 707.00 feet more or less, to the Point of Beginning.

in the City of Ann Arbor, Washtenaw County, Michigan as R4D (Multiple-Family Dwelling) District WITH CONDITIONS, in accordance with the attached Conditional Zoning Statement of Conditions which is hereby adopted and incorporated herein.

Section 2. This ordinance shall take effect and be in force on and after ten days from legal publication.

3380 Nixon Road – Owl Creek Apartments  
Conditional Zoning Statement of Conditions

This Conditional Zoning Statement of Conditions (“Statement of Conditions”) is made and entered into this \_\_\_ day of \_\_\_\_\_, 2024, by and between the City of Ann Arbor (“City”), a Michigan municipal corporation, with offices located at 301 E. Huron St., Ann Arbor, Michigan 48107, and 3380 Nixon Road – Owl Creek Apartments by BRE Nixon Road Associates, LLC, (“Developer”) a Michigan limited liability company, with principal address at 260 E. Brown Street, Birmingham, Michigan 48009.

**Recitals**

- A. The Michigan Zoning Enabling Act (P.A. 110 of 2006, as amended) allows for conditional zoning of land when the City is amending its zoning map, or a conditional zoning of land when the City is zoning property in MCL 125.3405.
- B. The City of Ann Arbor recognizes that there are certain instances where it would be in the best interest of the City, as well as advantageous to the Developer, for certain conditions to be proposed as part of a request for rezoning or a request for an amendment to the zoning map.
- C. On May 17, 2023, the Developer applied for an amendment to the City zoning map for land in the City of Ann Arbor to be site planned as ~~South Town~~Owl Creek, as more fully described in the attached **Exhibit A** (the “Property”).
- D. On December 4, 2023, the Developer voluntarily offered in writing conditions regarding the use and development of the land to be incorporated into the zoning of the Property.
- E. On February 22, 2024, the Planning Commission, after public hearing, recommended approval to rezone the Property to R4D (Multiple-Family Residential District) with Conditions. The Developer also submitted a Site Plan showing the specific proposed use and site design of the property.
- F. On August 19, 2024, the Ann Arbor City Council approved rezoning the Property to R4D With Conditions, adopting and incorporating the 3380 Nixon Road – Owl Creek Apartments Conditional Zoning Statement of Conditions, as Ordinance ORD-24-\_\_\_\_\_.

- G. Based on the specific facts and circumstances regarding this property, the City has decided to accept the Developer's offer of conditional zoning.
- H. By executing this Statement of Conditions, the City and the Developer desire to set forth and confirm the conditions under which the City grants conditional zoning of this Property.

NOW, THEREFORE, Developer and City agree:

1. Conditions Running with the Property. This Statement of Conditions covers the Property described in the attached **Exhibit A**. The Statement of Conditions is incorporated into the zoning of the Property and shall be binding upon and inure to the benefit of the Developer and the City, and their heirs, successors and assigns, and shall run with the Property.
2. List of Conditions. The conditional zoning was granted to the Developer based on conditions that were voluntarily offered by the Developer. The City and Developer agree that restrictions on the use and development of the land are necessary for consistency and conformance to the Comprehensive Plan. The conditions which form the basis of the City's grant of the conditional zoning are as follows:
  - a. The maximum height limit for this Property shall be 75 feet.
3. Developer Acknowledgment. Developer acknowledges that it voluntarily offered and consented to all the provisions contained in this Statement of Conditions. Developer agrees that the conditions contained herein are fair, reasonable and equitable requirements and conditions; agrees that the Statement of Conditions does not constitute a taking of property for any purpose or a violation of any constitutional right; and agrees to be bound by each and every provision of this Statement of Conditions. Furthermore, it is agreed and acknowledged that any improvements and undertakings described herein are necessary and roughly proportional to the burden imposed by the conditional zoning, and are necessary to ensure capability with adjacent and surrounding uses of land; to promote use of the Property in a socially and economically manner; and to achieve other legitimate objectives of the City authorized by law.
4. Authority to Execute. This Statement of Conditions has been authorized by all necessary action of Developer, and Developer acknowledges that it is the owner of the Property or has been authorized by the owner to conditionally zone this Property. Furthermore, the signatory for Developer acknowledges they are authorized to enter and execute this Statement of Conditions on behalf of Developer, and bind the Developer to its terms.
5. City Approval. The Statement of Conditions and the City's approval of these conditions is based on the particular facts and circumstances presented, as well as the surrounding land uses and other characteristics regarding this

property, and approval of these conditions for this Property may not be relied on as precedent by any other property owner seeking a conditional zoning.

- 6. Obligation to Obtain Other Approvals. Developer acknowledges that any use or development approved by this conditional zoning that may require a special land use permit, a variance, or site plan approval under the terms of Ann Arbor City Code, may only be commenced if such special land use permit, variance, and/or site plan approval is ultimately granted in accordance with the terms of Ann Arbor City Code.
- 7. Amendment. This Statement of Conditions may only be amended in the same manner as prescribed for a rezoning of property under the terms of Ann Arbor City Code.
- 8. Compliance with Statement of Conditions. Developer shall continuously operate and maintain the development and/or use of the Property in full compliance with all the conditions set forth in this Statement of Conditions. Any failure to comply fully with the conditions contained with the Statement of Conditions shall constitute a violation of the Zoning Ordinance of Ann Arbor City Code, and shall be punished accordingly. Any such violation shall be deemed a nuisance per se and subject to judicial abatement, or any other remedy as provided by law.
- 9. Rezoning. Developer acknowledges that nothing in this Statement of Conditions shall prohibit the City from exercising its right to rezone the property at any time as allowed by law. The City acknowledges that nothing in this Statement of Conditions shall prohibit the Developer from requesting a rezoning of the Property at any time.

CITY OF ANN ARBOR  
a Michigan municipal corporation

By: \_\_\_\_\_  
Christopher Taylor, Mayor

By: \_\_\_\_\_  
Jackie Beaudry, City Clerk

STATE OF MICHIGAN            )  
  ) ss  
COUNTY OF WASHTENAW    )

The foregoing Agreement was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2024 by Christopher Taylor and Jacqueline Beaudry, the Mayor and City Clerk

respectively of the City of Ann Arbor, a Michigan municipal corporation, on behalf of the corporation.

\_\_\_\_\_, Notary Public  
Acting in the County of Washtenaw  
My Commission Expires: \_\_\_\_\_

BRE Nixon Road Associates, LLC,  
A Michigan limited liability company

\_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF MICHIGAN            )  
  ) ss  
COUNTY OF WASHTENAW    )

The foregoing Agreement was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
2024 by \_\_\_\_\_, of \_\_\_\_\_, a \_\_\_\_\_,  
on behalf of the company.

\_\_\_\_\_, Notary Public  
Acting in the County of Washtenaw  
My Commission Expires: \_\_\_\_\_

Reviewed by and after recording return to:  
Kevin McDonald (P-61761)  
Office of the City Attorney  
City of Ann Arbor  
City of Ann Arbor  
P.O. Box 8647  
Ann Arbor, MI 48107-8647

Exhibit A

PARCEL 1:

Tax Item No. 09-09-10-401-001

Legal Description taken from First American Title Insurance Company, Title Commitment File No. 856683, Dated July 26, 2019.

That part of the Northeast  $\frac{1}{4}$  of the Southeast  $\frac{1}{4}$  of Section 10, Town 2 South, Range 6 East, Ann Arbor Township, Washtenaw County, Michigan, lying South of the South right of way line of US-23. EXCEPT, All that part of the Northeast  $\frac{1}{4}$  of the Southeast  $\frac{1}{4}$  of said Section 10, described as: Beginning at a point which is South 01 degrees 22 minutes 57 seconds East along the centerline of Nixon Road 1011.81 feet from the Northwest corner of the Northeast  $\frac{1}{4}$  of the Southeast  $\frac{1}{4}$  of said Section 10; thence North 88 degrees 37 minutes 03 seconds East, 50.00 feet; thence North 01 degrees 22 seconds East, 25.00 feet; thence North 01 degrees 22 minutes 57 seconds West, 248.26 feet to a point on the Southerly right-of-way line of Highway US-23; thence Westerly along said right-of-way line, to the centerline of Nixon Road; thence South 01 degrees 22 minutes 57 seconds East, 707.00 feet more or less, to the Point of Beginning.