# **STAFF REPORT**

TO:

Board of Aldermen

DATE:

October 18, 2005

**PROJECT:** 

Conditional Use Permit Extension Request for Old

Farmer's Market Office Building at 300 Roberson Street

**APPLICANT:** 

N. R. Milian Associates

(Nathan Milian)

200 North Greensboro Street

Carrboro, NC 27510

**OWNER:** 

Carr Mill Limited Partnership 200 North Greensboro Street

Carrboro, NC 27510

**PURPOSE:** 

Request for an extension of date when Conditional Use

Permit would otherwise expire for the Old Farmer's Market

Office Building project.

**EXISTING ZONING:** 

B-1(g), Business-1(general), and B-2, Fringe Commercial

TAX MAP NUMBER:

7.99.D.19B (building site) and 7.93.A.14 (location of Carr

Mill Mall)

**LOCATION:** 

300 Roberson Street (building site) and 200 North

Greensboro Street (Carr Mill Mall Site)

TRACT SIZE:

2.095 acres total [25,227 square feet (0.58 acres) building

site]

**EXISTING LAND USE:** 

Building site - Parking Lot; Carr Mill Mall Complex -

Various Uses

PROPOSED LAND USE:

Building Site - 2.120, 3.110, 3.110, 3.120, 3.130; Carr Mill

Mall Complex – No change.

**SURROUNDING** 

LAND USES:

North: B-1(c), Retail, Office, and Restaurant Uses

South: R-3, Roberson Place Subdivision

East: B-1(g), Health Clinic

West: B-1(g), South Orange Rescue Squad

**ZONING HISTORY:** B-1(g) & B-2, Since 1986; B-1, Prior to 1986

**RELEVANT** 

**ORDINANCE SECTIONS:** Section 15-62 Expiration of Permits

#### **BACKGROUND**

The property manager of 300 Roberson Street, Mr. Nathan Milian, has requested an extension of the date on which a previously issued Conditional Use Permit (CUP) would otherwise expire (Attachment B). The Board of Aldermen originally granted the Conditional Use Permit on November 12, 2002 (Attachment C) and granted a one-year extension of the expiration deadline on September 7, 2004. The CUP allows construction of a three-story office and retail building at the corner of Roberson Street and Sweet Bay Place (Attachment D).

Upon realizing that the permit expiration date again was nearing, Mr. Milian contacted staff to discuss the possibility of seeking an extension. In a letter submitted to staff regarding this matter, Mr. Milian cited market conditions and economic factors as reasons why he has not moved forward expeditiously with construction of the project (see Attachment B). Specifically, Mr. Milian notes an overabundance of rental office space currently in the market along with a drop in demand for space region wide. Mr. Milian also mentions that he has spent a considerable sum of money and that he generally has invested a large amount of time in the project to date.

Should the Board choose to grant the permit extension request, please note that construction plans must still be reviewed and approved, and a pre-construction meeting must be held before construction may begin.

#### APPLICABLE LUO PROVISIONS

Extensions to the date on which a permit would otherwise expire must be granted in accordance with Section 15-62 (Expiration of Permits) of the LUO, which is attached for your information (Attachment E). Specifically, please note that Section 15-62(a) of the LUO dictates that the CUP would have expired on November 12, 2004, if not for the one-year extension granted on September 7, 2004. With consideration given to the one-year extension, the CUP is now set to expire on November 19, 2005 because less than ten percent (10%) of the total cost of all construction, erection, alteration, excavation, demolition, or similar work on the development authorized by the permit has been completed on the site. As previously mentioned, Mr. Milian has been actively marketing the project to prospective tenants, but no work (0%) has been completed on the site to date.

Section 15-62(c) gives the permit-issuing authority (Board of Aldermen) the authority to grant an extension to the date on which the permit would otherwise expire. Section 15-62(c) reads as follows:

"(c) The permit-issuing authority may extend for a period up to one year the date when a permit would otherwise expire pursuant to subsections (a) and (b) if it concludes that (i) the permit has not yet expired, (ii) the permit recipient has proceeded with due diligence and in good faith, and (iii) conditions have not changed so substantially as to warrant a new application. Successive extensions may be granted for periods up to one year upon the same findings. All such extensions may be granted without resort to the formal processes and fees required for a new permit."

Staff offers the following information related to the conditions outlined in Section 15-62(c):

## 1. The permit has not yet expired.

COMPLIANCE: Yes, it is true that the permit has not yet expired. As previously mentioned, the permit would expire on November 19, 2005 should an extension not be granted.

### 2. The permit recipient has proceeded with due diligence and in good faith.

COMPLIANCE: Yes, the permit recipient has proceeded with due diligence and in good faith. Mr. Milian has actively marketed the project to prospective tenants. Due to a decline in demand for rental office space throughout the region, Mr. Milian has been unable to date to lease adequate space in the building to justify its construction.

# 3. Conditions have not changed so substantially as to warrant a new application.

COMPLIANCE: Yes, it is true that conditions have not changed so substantially as to warrant a new application. No changes to the property have taken place since the permit was originally approved. The LUO has been changed so that a taller building (up to five stories) potentially could be permitted on this site, but no additional height or additional stories are contemplated at this time.

# 4. Successive extensions may be granted for periods up to one year upon the same findings.

COMPLIANCE: Staff is suggesting that the Board draw the same conclusions and adopt the same findings as last year's extension request.

#### RECOMMENDATION

The Town Staff recommends that the Board of Aldermen adopt the attached resolution (**Attachment F**) approving the permit extension request. The new expiration date for the permit would be November 12, 2006.



October 6, 2005

Mr. Marty Roupe
Planning Department
Town of Carrboro
301 West Main Street
Carrboro, North Carolina 27510

Dear Marty,

As you are aware, Carr Mill has an existing C.U.P. to build a three-story building at the intersection of Roberson and Sweet Bay. Due to many factors, not the least of which is the current glut of office space in this market and the imminent prospect of even more, the owners would like to request an extension of our C.U.P. It expires in November 19, 2005. Per section 15-62 a. of the L.U.O., a permit will expire if the work has not been commenced, or if commenced, less than 10% of total cost has not been completed /expended. Unfortunately our project falls into this classification.

We have reviewed the conditions under which the date a permit expires may be extended for one year, as given in LUO 15-62. There are three conditions for granting an extension:

a.) permit has not yet expired - (expiration date 11/19/05):

b.) applicant proceeded with due diligence and in good faith. I have continued to aggressively pursue prospective tenants for this project, however, an overabundance of office space and the continuing soft market for that space has made it impossible to meet the pre-leasing requirements necessary to begin construction.

c.) conditions have not changed substantially as to warrant a new application. - We don't believe conditions have changed at all.

We are extremely interested in the healthy growth of downtown Carrboro. We have a substantial investment here, with a strong desire to make additional investments for the benefit of ourselves and the community. Please consider and approve our request. The board has approved a phasing of our previous C.U.P. in the past. We view this request much the same way. Thank you for your consideration.

Sincerely,

Nathan R. Milian, CSM

Cc: Jack Haggerty

#### PREPARED BY AND RETURN TO:

TOWN CLERK
TOWN OF CARRBORO
301 West Main Street
CARRBORO, NORTH CAROLINA 27510



# ORANGE COUNTY NORTH CAROLINA

# TOWN OF CARRBORO CONDITIONAL USE PERMIT GRANTED

On the date(s) listed below, the Board of Aldermen of the Town of Carrboro met and held a public hearing to consider the following application:

APPLICANT: N.R. Milian Associates

OWNER: Carr Mill Limited Partnership

PROPERTY LOCATION (Street Address): 300 Roberson Street (building site) and 200 North Greensboro Street (Carr Mill Mall site)

TAX MAP, BLOCK, LOT(S): 7.99.D.19B (building site) and 7.93.A.14 (location of Carr Mill Mall)

PROPOSED USE OF PROPERTY: Three-story mixed use office building

CARRBORO LAND USE ORDINANCE USE CATEGORY: 2.120, 3.110, 3.120, 3.130 (Uses listed allowed in new three-story building.) (Previously issued conditional use permit remains in effect.)

MEETING DATES: October 22, November 19, 2002

Having heard all the evidence and arguments presented at the hearing, the Board finds that the application is complete, that the application complies with all of the applicable requirements of the Carrboro Land Use Ordinance for the development proposed, and that therefore the application to make use of the above described property for the purpose indicated is hereby approved, subject to all applicable provisions of the Land Use Ordinance and the following conditions:

 The applicant shall complete the development strictly in accordance with the plans submitted to and approved by this Board, a copy of which is filed in the Carrboro Town Hall. Any deviations from or changes in these plans must be pointed out specifically to the administrator in writing and specific written approval obtained as provided in Section 15-64 of the Land Use Ordinance.

- 2. If any of the conditions affixed hereto or any part thereof shall be held invalid or void, then this permit shall be void and of no effect.
- 3. That the Board hereby finds that 592 parking spaces are sufficient to serve the proposed office building as well as the Carr Mill Mall Shopping Center. The Board makes this finding based on the evidence submitted showing that between 40-60 parking spaces regularly remain vacant at 300 Roberson Street, based on the development's close proximity to the central business district, and based on the site's proximity to bus lines.
- 4. That the construction plans shall appropriately illustrate the re-striping of parking spaces to match the number of subcompact spaces described in the chart on page L-1 of the CUP plans.
- 5. That the construction plans shall include a bike rack within the bicycle parking area, along with a detail drawing for a 'wave' model bike rack that can accommodate at least five (5) bikes.
- 6. That all on-site lights be reduced to a maximum height of fifteen feet (15') in accordance with Section 15-243(c) of the Land Use Ordinance prior to the issuance of a 'certificate of occupancy' for the building.
- 7. That the proposed building be located eight feet (8') south of the location currently shown on the cup plans and that this location be shown on the construction plans. In addition, that the sidewalk along Roberson Street be configured in such a way so as to accommodate future on-street parking.
- 8. That if feasible, the dumpster be moved to the eastern property line on the South Orange Rescue Squad property, and if not, then the dumpster should be located on the Orange Rescue Squad property at the location previously approved by the public works director and that the dumpster be screened with a fence.
- 9. That the applicant place three (3) Foster Holly trees in the proposed planting island directly west of the entrance point for the development in lieu of transplanting the existing trees on the site into the planting island
- 10. That the developer and contractors direct construction traffic to use Roberson Street instead of Carr Street.
- 11. That the applicant dedicate additional sidewalk right-of-way along the Roberson Street frontage and that the dedication extends to the beginning of the handicap ramp on the Roberson Street side of the property. In addition, that the edges of the sidewalk within the public right-of-way be clearly demarcated with a brick border, consistent with other sidewalks in the downtown area. The right-of-way dedication and brick borders must be shown on the construction plans.
- 12. That the applicant dedicate additional sidewalk right-of-way along Sweet Bay Place extending to the beginning of the water garden feature on the Sweet Bay Place side of the property, and that the dedication should extend from the Roberson Street/Sweet Bay Place intersection to the proposed entrance/exit point on the property. In addition, the edges of the sidewalk within the public right-of-way shall be clearly demarcated with a brick border, consistent with other sidewalks in the downtown area. The right-of-way dedication and the brick borders must be shown on the construction plans.

This permit shall automatically expire within two years of the date of issuance if the use has not commenced or less than 10 percent (10%) of total cost of construction has been completed or there has been non-compliance with any other requirements of Section 15-62 of the Carrboro Land Use Ordinance.

All street construction on those streets proposed for acceptance by the Town of Carrboro shall be certified by an engineer. Engineering certification is the inspection by the developer's engineer of the street's subgrade, base material, asphalt paving, sidewalks and curb and gutter, when

# Attachment "C" -3

**TOWN OF CARRBORO** CONDITIONAL USE PERMIT (con't)

used. The developer's engineer shall be responsible for reviewing all compaction tests that are required for streets to be dedicated to the town. The developer's engineer shall certify that all work has been constructed to the town's construction specifications.

If this permit authorizes development on a tract of land in excess of one acre, nothing authorized by the permit may be done until the property owner properly executes and returns to the Town of Carrboro the attached acknowledgment of the issuance of this permit so that the town may have it recorded in the Orange County Registry.

NORTH CAROLINA

**ORANGE COUNTY** 

IN WITNESS WHEREOF, the Town of Carrboro has caused this permit to be issued in its name, and the undersigned being all of the property above described, do hereby accept this Conditional Use Permit, together with all its conditions, as binding upon them and their successors in interest.

		THE TOWN OF CARRBO	)RO
ATTEST:			
	(SEAL)	BY	
Town Clerk	. ,	BY Town Manager	
that Sarah C. Williamson, I day and being by me duly Town of Carrboro and that Town of Carrboro, that Stev Williamson, Town Clerk is corporate seal of the Town	Fown Clerk for the Town of C sworn says each for himself the the seal affixed to the foregoing the E. Stewart, Town Manager for the Town of Carrboro su	r said County and State, do hereby ce Carrboro, personally came before me that she knows the corporate seal of any instrument is the corporate seal of r of said Town of Carrboro and Sara abscribed their names thereto; that reto, all by virtue of a resolution of deed of the Town of Carrboro.	this the f the h C.
IN WITNESS THER	EOF, I have hereunto set by ha	and and notarial seal this the da	y of
	_	(SE	AL)
My Commission Expires:		Notary Public	,
acknowledges that no work n	Conditional Use Permit. The unity be done pursuant to this perand that this restriction shall be	, owner, do hereby ndersigned owner(s) do further emit except in accordance with all of e binding upon them and their	ìits
NORTH CAROLINA		Owner	<del></del> -
ORANGE COUNTY			
hereby certify that		n and for said County and State, do	
appeared before me this day a	and acknowledged the due exec	cution of the foregoing instrument.	
WITNESS my hand a	nd notarial seal this the da	y of, 2003.	
My Commission Expires:		Notary Public	

Attachment "C" -

TOWN OF CARRBORO CONDITIONAL USE PERMIT (con't) Page #4

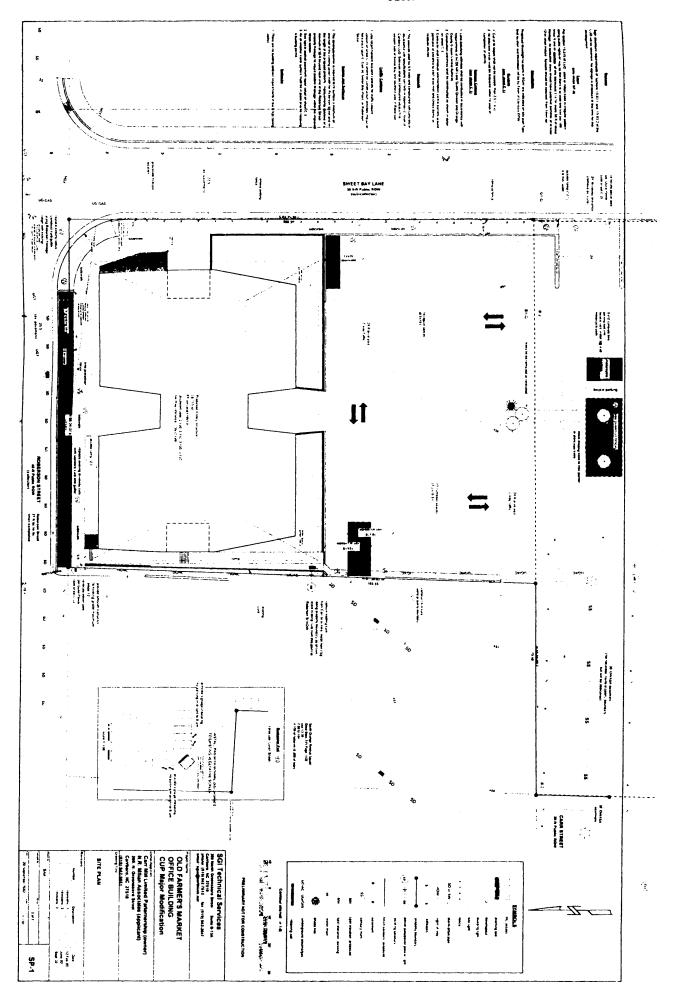
(Not valid until fully executed and recorded)

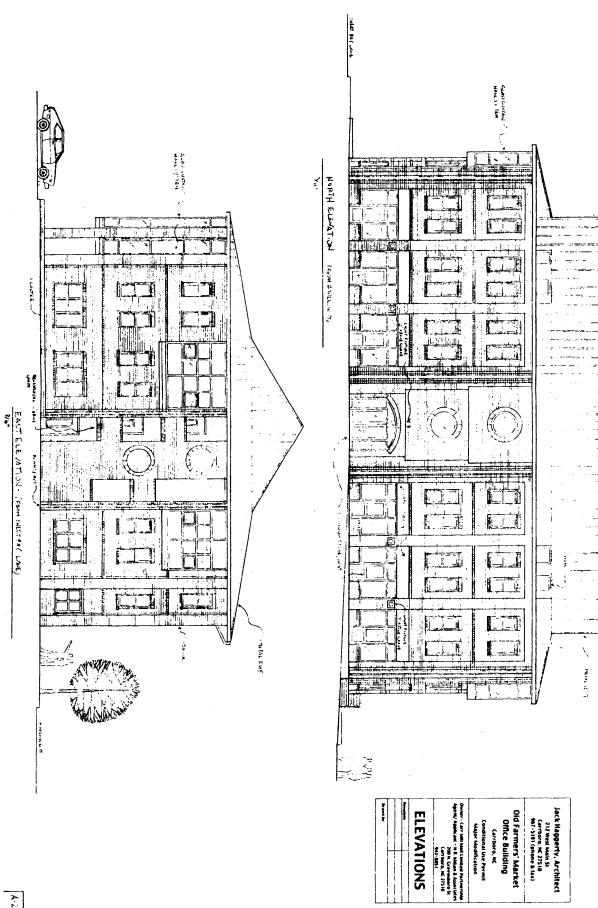
STATE OF NORTH CAROLINA COUNTY OR ORANGE

The foregoing certificate(s) of		Notary/Notarie
Public of the designated governmental	units (is) (are) certified to be correct.	
This the day of	, A.D. 2003.	
	Ву:	
Register of Deeds	Assistant/Denuty	Pagister of Deeds

PREPARED BY AND RETURN TO:

TOWN CLERK
TOWN OF CARRBORO
301 West Main Street
CARRBORO, NORTH CAROLINA 27510





# Town of Carrboro Land Use Ordinance Excerpt:

## Section 15-62 Expiration of Permits.

- (a) Zoning, special use, conditional use, and sign permits shall expire automatically if, within two years after the issuance of such permits: (AMENDED 5/26/81)
  - (1) The use authorized by such permits has not commenced, in circumstances where no substantial construction, erection, alteration, excavation, demolition, or similar work is necessary before commencement of such use; or
  - (2) Less than ten percent of the total cost of all construction, erection, alteration, excavation, demolition, or similar work on any development authorized by such permits has been completed on the site. With respect to phased development (see Section 15-61), this requirement shall apply only to the first phase.
- (b) If, after some physical alteration to land or structures begins to take place, such work is discontinued for a period (i) of one year if the date of discontinuance occurs more than one year after the issuance of the permit, or (ii) equal to two years less the time between the issuance of the permit and the time work is discontinued if the date of discontinuance occurs less than one year after the issuance of the permit, then the permit authorizing such work shall immediately expire. However, expiration of the permit shall not affect the provisions of Section 15-63.
- (c) The permit-issuing authority may extend for a period up to one year the date when a permit would otherwise expire pursuant to subsections (a) and (b) if it concludes that (i) the permit has not yet expired, (ii) the permit recipient has proceeded with due diligence and in good faith, and (iii) conditions have not changed so substantially as to warrant a new application. Successive extensions may be granted for periods up to one year upon the same findings. All such extensions may be granted without resort to the formal processes and fees required for a new permit.
- (d) For purposes of this section, a permit within the jurisdiction of the Board of Aldermen or the board of adjustment is issued when such board votes to approve the application and issue the permit. A permit within the jurisdiction of the zoning administrator is issued when the earlier of the following takes place: (AMENDED 11/10/81)

- (1) A copy of the fully executed permit is delivered to the permit recipient, and delivery is accomplished when the permit is hand delivered or mailed to the permit applicant; or
- (2) The zoning administrator notifies the permit applicant that the application has been approved and that all that remains before a fully executed permit can be delivered is for the applicant to take certain specified actions, such as having the permit executed by the property owner so it can be recorded if required under G.S. 15-46(c).
- (e) Notwithstanding any of the provisions of Article VIII (Nonconforming Situations), this section shall be applicable to permits issued prior to the date this section becomes effective.

# A RESOLUTION APPROVING AN EXTENSION OF THE DATE ON WHICH A CUP WOULD OTHERWISE EXPIRE FOR THE OLD FARMER'S MARKET OFFICE BUILDING AT 300 ROBERSON STREET Resolution No. 29/2005-06

WHEREAS, the Carrboro Board of Aldermen approved a Conditional Use Permit for the Old Farmer's Market Office Building at 300 Roberson Street on November 12, 2002; and

WHEREAS, Section 15-62(a) of the Town of Carrboro Land Use Ordinance states that a CUP will expire automatically within two years of the issuance date if less than ten percent (10%) of the total cost of the project has been completed on site, unless the permit-issuing authority extends the expiration date pursuant to the findings found in Section 15-62(c) of the Land Use Ordinance; and

WHEREAS, on September 7, 2004, the Carrboro Board of Aldermen approved an extension of the date when the Conditional Use Permit for the Old Farmer's Market Office Building at 300 Roberson Street otherwise would expire; and

WHEREAS, the Board of Aldermen finds, per Section 15-62(c) of the LUO, that: 1) the CUP has not yet expired, 2) the permit recipient has proceeded with due diligence and in good faith, and 3) conditions have not changed so substantially as to warrant a new application.

NOW, THEREFORE BE IT RESOLVED by the Carrboro Board of Aldermen that the expiration date for the Old Farmer's Market Office Building Conditional Use Permit is hereby extended to November 12, 2006.