

BOARD OF ALDERMEN

ITEM NO.: C(4)

AGENDA ITEM ABSTRACT

MEETING DATE: DECEMBER 5, 2006

TITLE: A REQUEST FOR A MINOR MODIFICATION TO THE CONDITIONAL USE PERMIT FOR THE WINMORE VILLAGE MIXED USE PROJECT AT 1400 HOMESTEAD ROAD

DEPARTMENT: PLANNING DEPARTMENT	PUBLIC HEARING: YES ___ No <u>X</u>
ATTACHMENTS: A. RESOLUTION APPROVING MINOR MODIFICATION REQUEST B. COPY OF CONDITIONAL USE PERMIT GRANTED ON JUNE 10, 2003 C. PROJECT SITE PLAN D. LETTER FROM MR. ERIC CHUPP	FOR INFORMATION CONTACT: MARTY ROUPE, 918-7333

PURPOSE

The Board is asked to review a request for a Minor Modification to the Conditional Use Permit for the Winmore Village Mixed Use project at 1400 Homestead Road. The request involves replacing CUP condition #30 with new language that would make the condition consistent with currently-proposed LUO Amendment language related to the floodplain provisions of the ordinance. Town Staff recommends adoption of the attached resolution approving the CUP Minor Modification request.

INFORMATION

Background

The Board of Aldermen approved a Conditional Use Permit (CUP) on June 10, 2003 for construction of a Village Mixed Use project (VMU) at 1400 Homestead Road (**Attachment B**). The CUP allows construction of 98 Single-Family Lots, 66 Multi-Family Townhome Lots, 68 Multi-Family Apartments, and 20 Commercial Lots. Forty-eight (48) of the units will meet the Town's affordable housing criteria, which are set forth in Section 15-182.4 of the Town's Land Use Ordinance (LUO).

In accordance with CUP Condition #30, the applicant is required to obtain a *Letter of Map Revision (LOMR)* from FEMA, related to bridge construction over Bolin Creek, before a final plat for the project is approved. A LOMR indicates final acceptance by FEMA of construction within a floodway. If FEMA finds deficiencies in the bridge's construction, then they may require corrections as necessary to make the bridge comply with the approved construction plans. As a result, a LOMR is not typically issued until the bridge essentially is complete. Approval of the final plat is the point at which individual properties within the development may be conveyed to third-party purchasers. The condition reads as follows (see **Attachment B**):

30. *That if a Letter of Map Revision (LOMR) must be obtained from FEMA, that such letter must be obtained prior to final plat approval.*

Current Proposal

The applicant approached staff with questions about condition #30 and subsequently requested a change to the wording of condition #30. The attached letter (**Attachment D**) explains reasons for requesting a change. Staff and the applicant discussed the matter and generally agreed that a modification may be acceptable. Two particular aspects of current conditions, compared to conditions at the time the CUP was issued, led staff to support the requested change. The two aspects are further discussed below:

- ***Ongoing construction of Claremont AIS immediately south of Winmore site.*** A primary reason condition #30 required issuance of the LOMR before final plat approval related to a ‘worst case scenario’ for construction of the bridge. To further explain, as an absolute worst case scenario it is conceivable that FEMA would find great deficiencies with construction warranting removal and reconstruction. This is an extremely rare circumstance anywhere, anytime, and is even less likely in Carrboro since periodic inspections are conducted during construction by both the applicant’s engineer and the Town’s engineer. Still, the staff was very concerned about this remote possibility because approval of the final plat allows multiple third-parties to enter the picture (i.e.: purchasers of lots within the development). If the worst case scenario arose, then it is conceivable that the respective third-parties would not have reasonable access to their property for an undetermined amount of time, since the bridge across Bolin Creek was the only way in and out of the property.

Since the Winmore CUP was granted, however, the Claremont AIS development also has been approved and road construction begun. Claremont connects with Winmore at three (3) public road points on its northern property line and Winmore’s southern property line. Therefore, if the worst case scenario for the bridge does occur, property owners now will have alternate access points through the public street network in Claremont.

- ***Proposed changes to LUO language relating to flood hazard areas and final plats.*** Independent of the applicant, during recent review of the floodplain-related provisions of the LUO, staff discussed the applicability of Section 15-255(c) with respect to bridge construction. The aforementioned section reads as follows:

“Final plat approval for any subdivision containing land that lies within a floodway or floodplain may not be given unless the plat shows the boundary of the floodway or floodplain and contains in clearly discernible print the following statement: “Use of land within a floodway or floodplain is substantially restricted by Article XVI of Chapter 15 of the Carrboro Town Code.””

After discussing the matter at some length, staff decided to add clarifying language to the proposed new flood-related provisions of the LUO. A public hearing was conducted on these provisions on November 28, 2006. At that point, the Board of Aldermen appeared prepared to adopt the proposed revisions to the language but held their action at staff’s request pending confirmation and acceptance of our draft ordinance from the appropriate state agency. The proposed new language is as follows:

“Final plat approval for any subdivision containing land that lies within a Special Flood Hazard Area may not be given unless the plat shows the boundary of the SFHA according to the best information available at the time the final plat is approved and contains in clearly discernible print the following statement: “Use of land within a special flood hazard area is substantially restricted by Article XVI of Chapter 15 of the Carrboro Town Code.” If, at the time final plat approval is granted, a Conditional Letter of Map Revision (CLOMR) affecting such subdivision has been approved, or the town is otherwise aware that some action is pending that would likely alter the location of the boundary of the SFHA as it affects such subdivision, then the statement on such plat referenced immediately above shall include a note similar to the following: “The location of the boundary of the special flood hazard area may be altered by a request for a special flood hazard map revision now pending before the Federal Emergency Management Agency.””

In summary, the new language provides clear notice to prospective third-party buyers of potential changes to the lots contained on any such plat while still allowing a development to proceed and progress on a predictable timeline. Note that the language under discussion only clarifies the applicability of existing ordinance language. It is not expected to be further edited in any way.

Conclusion

Staff suggests that the existing language of CUP condition #30 (see bottom of page 1) be replaced with the following language:

Language Proposed to Replace Condition #30:

- That a Letter of Map Revision (LOMR) must be obtained from FEMA prior to the granting of the 117th Certificate of Occupancy for homes at Winmore, and that the following or similar note be included on the final plat:

“Use of land within a floodplain / special flood hazard area is substantially restricted by Article XVI of Chapter 15 of the Carrboro Town Code.” Further, since at the time final plat approval is granted, a Conditional Letter of Map Revision (CLOMR) affecting such subdivision has been approved but a Letter of Map Revision (LOMR) has not yet been approved, all property purchasers are hereby on notice that the location of the boundary of the floodplain / special flood hazard area may be altered by a request for a floodplain / special flood hazard map revision now pending before the Federal Emergency Management Agency.”

Public Hearing

It is within the purview of the Board of Aldermen to call a public hearing before rendering a decision on the requested changes. Specifically, with regard to Minor Modification requests, Section 15-64(b) of the LUO states the following: “Unless it is requested by the permit-issuing authority, no public hearing shall be required for such minor modification.”

FISCAL IMPACT

N/A

RECOMMENDATION

The Town Staff recommends that the Board of Aldermen adopt the attached resolution (**Attachment A**) approving the Minor Modification request. The resolution includes new language replacing existing CUP Condition #30.