

# BOARD OF ALDERMEN

ITEM NO. (3)

## AGENDA ITEM ABSTRACT

MEETING DATE: FEBRUARY 26, 2008

**TITLE:** CONTINUATION OF PUBLIC HEARING FOR ROBERSON SQUARE MIXED USE  
BUILDING CONDITIONAL USE PERMIT

<b>DEPARTMENT:</b> PLANNING DEPARTMENT	<b>PUBLIC HEARING:</b> YES <u>X</u> No <u>  </u>
<b>ATTACHMENTS:</b> A. PROJECT PLANS (INCLUDED W/ 1/22/8 AGENDA & STILL AVAILABLE AT WEB-LINK PROVIDED BELOW) B. STAFF REPORT C. LAND USE PERMIT APPLICATION D. PARKING JUSTIFICATION STATEMENT E. SCREENING RELAXATION REQUEST F. APPEARANCE COMMISSION'S CERTIFICATION OF ALTERNATIVE ARCHITECTURAL DESIGN G. DOWNTOWN CONSTRUCTION MITIGATION LETTER H. LETTER FROM REAL ESTATE APPRAISER RELATED TO BURDEN OF PROOF I. LETTER(S) FROM APPLICANT REGARDING TOWN POLICIES, WORTHINESS, AND GREEN FEATURES J. STAFF RECOMMENDATIONS & JOINT REVIEW SUMMARY SHEET OF RECOMMENDATIONS  <b>NEW TO THIS REPORT:</b> K. MESSAGE(S) FROM APPLICANT ADDRESSING QUESTIONS FROM BOARD OF ALDERMEN L. RESPONSE MESSAGE FROM TOWN ATTORNEY'S OFFICE ADDRESSING QUESTIONS FROM BOARD OF ALDERMEN M. COPY OF NOISE ORDINANCE N. COPY OF CHAPEL HILL, NC'S RESIDENTIAL PARKING PERMIT ORDINANCE O. MINUTES FROM 4/18/06 BOARD OF ALDERMEN MEETING P. PARKING-RELATED EXCERPTS FROM ADOPTED POLICY DOCUMENTS Q. PARKING PAYMENT-IN-LIEU MEMO R. MAP OF DOWNTOWN PARKING S. CONDITIONAL USE PERMIT WORKSHEET FOR TALLER BUILDINGS	<b>FOR INFORMATION CONTACT:</b> MARTY ROUPE, 918-7333

## **PURPOSE**

On January 22, 2008, the Board of Aldermen began a public hearing for a CUP application from Darcon of NC, LLC to allow for the construction of a five-story mixed-use building at 203 South Greensboro Street, on the site where the Andrew—Riggsbee Hardware Store formerly operated. The public hearing was then continued to February 26, 2008. Prior to reaching a decision on a request for a CUP, the Board of Aldermen must complete the public hearing. Town staff recommends that the Board of Aldermen continue the public hearing and consider issuing the requested Conditional Use Permit.

## **INFORMATION**

The application includes a five-story building that will contain a mix of retail, office, and restaurant uses, with multifamily condominiums comprising the top three floors. All private parking associated with the building is located underground. Additional details are provided in the attached staff report and additional attachments from the previous meeting (**Attachments B—J; for Attachment A, please see: <http://www.townofcarrboro.org/pzi/bulletinboard/PDFs/CompletePlans-PDF.pdf>**). At that meeting, the Board requested that staff and the applicant address several concerns and report back. These items are detailed below and where necessary in noted, new attachments:

- **E-Z Rider access.** The applicant submitted a letter addressing E-Z Rider accessibility (**Attachment K**).
- **Legality of transfer fee.** Town Attorney Bob Hornik responded via email. Mike Brough later concurred with Mr. Hornik's response, also via email (**Attachment L**).
- **Noise ordinance.** As requested, please find as **Attachment M** a copy of the Town's noise ordinance. The Board also asked whether particular conditions related to noise imposed on other development projects. Staff notes that some conditions have been imposed related to the entrance / exit / travel-ways for construction vehicles, which may indirectly mitigate noise issues associated with construction but staff does not recall any conditions imposed directly related to noise.
- **Chapel Hill's residential permit parking ordinance.** As requested, please find as **Attachment N** a copy of Chapel Hill's ordinance. Transportation Planner Adena Messenger spoke with Chapel Hill staff and notes that residential permit parking is handled by Parking Services, a division in the Department of Finance. Permits are issued on an annual basis and residents requesting permits must show proof of residency. There is no charge for the permit; however, there is a \$15 replacement fee. Only residents living on the streets listed in the ordinance can request a permit. If residents want to add their street to the list of streets requiring a parking permit, they must present their case to the Town Council, including a signed petition from the people living on the street. Residential parking permits vary from 24-hour to only certain times of the day.

If the Board of Aldermen is interested in possibly instituting a similar program in Carrboro, then staff requests an opportunity to fully analyze the idea. No such analysis has been performed for tonight's meeting, but it is clear that implementing such a program would have both budgetary and staff impacts.

- **Methodology for determining parking requirements.** The Board requested additional information on the process for determining an acceptable number of parking spaces for

development projects. The Board expressed interest in 1) information on the general process with no particular project in mind, 2) information on this particular project including an updated and clear parking table, and 3) information on how the numbers were determined for the following previously-approved projects: Pacifica, Alberta, and Phase A of 300 East Main Street. The following information has been compiled per this request:

- **General Determination(s):** Land Use Ordinance Section 15-291(g) establishes presumptive parking standards for all development projects. Staff is guided by the numbers and requirements set forth in this section. When an applicant requests a deviation from these standards (an increase or a decrease), then they carry the burden of submitting information sufficient to convince the permit-issuing authority (in this case the Board of Aldermen) that a change to the presumptive numbers is acceptable. Staff discusses the matter with the applicant, but it is always made clear that the decision ultimately remains with the permit-issuing authority. In discussions, staff routinely describes by way of example how other applicants have gone about justifying their parking. Related information for a few projects is described below.

Of note, prior to revising Section 15-297 ('Joint Use of Required Parking Spaces') in May 2004, staff was somewhat more willing to explicitly agree or disagree with the justification information submitted by the applicant. In other words, staff usually prepared a permit condition that included a specific number of spaces, sometimes below / sometimes above, the presumptive number of spaces established by the LUO. The revisions to 15-297, however, were intended to "capture" a reasonable reduction and establish it as a matter of ordinance for particular downtown zoning districts. Still, 15-297 does not capture all uses typically proposed for downtown projects (such as restaurants) and the parking information in the LUO remains presumptive, so it still is reasonable for an applicant to submit evidence as to why their provided parking should be sufficient to serve a proposed development.

- **Roberson Square Parking Information:** The presumptive number of parking spaces for this project is 104 spaces. The applicant has submitted various information (contained within Attachments B—J) supporting their assertion that 65 spaces is sufficient to serve the development. Most recently, the applicant submitted additional information including a more clear and concise parking table (**Attachment K, Pages 9-10**) and email correspondence along with an associated map and tables constituting a downtown parking survey conducted by the applicant (**Attachment K, Pages 4-8**).
- **Pacifica Parking Information:** After a LUO-permissible reduction of two (2) spaces for including a bike rack and motorcycle pad, the presumptive number of required spaces was 82. The applicant proposed 84 spaces (71 off-street spaces, plus an additional 13 spaces along Viburnun Way, the private road serving the development). A condition imposed during the public hearing required the elimination of eleven (11) off-street parking spaces, due to concerns raised by neighbors. This left the project with a total of 73 approved parking spaces when the CUP originally was granted rather than the original 84 spaces proposed. Later, the developer and a number of residents requested and received approval to add back ten (10) parking spaces, bringing the total number of spaces to 83.

- **Phase A of 300 East Main Street Parking Information:** The presumptive number of required spaces for this project was 187. The applicant provided 35 spaces dedicated to this particular building, one of several ultimately proposed. The applicant justified the situation by describing that the parking lots on adjacent sites (that they own) will be shared with this building and by stating that the parking demand / usage would vary depending on the hour. The applicant committed by way of CUP condition to providing an additional 90 spaces within 1,320-feet of the property within 24 months of receiving a CO for the building, for a total of 125. The applicant intends to move forward with their application to build a parking deck on adjacent land to meet this condition.
- **The Alberta Parking Information:** The presumptive number of spaces for this project encompasses the Carr Mill Mall complex as well, as parking for the complex and the new building are bound together by the terms of the permit. In short, they actually have an excess of parking. More specifically, the parking requirement for both sites together is 500 spaces, and the two sites together contain 571 spaces, thereby exceeding the presumptive number required by the LUO by 71.
- **Possibility of on-street parking along Carr Street.** The Board requested additional information on the possibility of including on-street parking along Carr Street. The applicant has prepared a response included as **Attachment K, Page 3**. Of note, Project Architect David Ripperton discussed this idea directly with the Board of Aldermen on April 18, 2006 during a pre-development application, courtesy-level policy discussion. The minutes from this discussion are included as **Attachment O**.
- **Parking excerpt from Downtown Vision document.** The Board requested and staff has included as **Attachment P** the parking section of the Downtown Vision document. Related excerpts from other policy documents are included as well.
- **Payment-in-lieu for parking spaces.** The Board asked for examples of how this mechanism is utilized in other jurisdictions. Also, the Board wishes to know whether the fee can be determined during the CUP review process. For the former, please find a memo attached from Planning Administrator Trish McGuire (**Attachment Q**). Regarding whether the fee can be determined during the review process, please be reminded that the Town Attorney formerly determined that it would not be acceptable to do so since a parking plan has not yet been created.
- **Acceptable length of time before Board should make decision on project.** The Board asked for additional information on how long is reasonable to wait before rendering a decision on a CUP application. The Town Attorney's office prepared a response, which is included as a part of **Attachment L**.
- **Disposition of parking for the project.** The Board asked for additional information regarding the developer's intentions for the parking spaces, in particular whether the spaces will be assigned, open to the public, etc. The applicant has prepared a response addressing this matter (see **Attachment K**).

- **Map of downtown parking.** The Board requested and staff has provided a copy of a previously-completed map of available downtown parking (**Attachment R**).
- **Proposed new wording for Condition #5.** Subsequent to the January 22, 2008 meeting, staff discussed and now suggests the following re-worded CUP condition related to off-site satellite parking spaces:
  - CUP Condition #5, re-written:
    - 5-a) That the applicant secure an additional *11* parking spaces within 400-feet of the site to serve the project prior to receiving a Certificate of Occupancy *and change the building space intended for restaurants to office use unless condition 5-b is satisfied.* The provision of these additional parking spaces shall be a continuing, and legally binding part of the terms of the CUP. *If the applicant is unable to secure such spaces, then the applicant understands and agrees that it may be necessary to seek a permit modification to address the situation, prior to receiving a Certificate of Occupancy. Any such permit modification request will be reviewed in accordance with LUO Section 15-64, including the possibility of a new public hearing. (italicized words represent newly-added or modified language),* and
    - 5-b) *Further, that prior to any restaurant receiving approval to open in the building, the applicant must have secured sufficient additional parking spaces within 400-feet of the site to satisfy the presumptive parking requirement for the proposed restaurant square footage, prior to receiving a Certificate of Occupancy. The provision of these additional parking spaces shall be a continuing, and legally binding part of the terms of the CUP. (italicized words represent newly-added language)*

Staff suggests that the new wording provides more flexibility as the project moves forward. Essentially, if the applicant is unable to obtain satellite parking spaces, then it will not be possible for restaurants to open within the building.

#### **RECOMMENDATION (#5 revised from original)**

Town staff recommends that the Board of Aldermen approve the Conditional Use Permit to allow the construction of a five-story mixed use building (Use 27.000, consisting of Uses 1.331, 1.340, 2.111, 2.120, 2.130, 2.210, 2.220, 2.230, 3.110, 3.120, 3.130, 3.150, 3.250, 8.100, and 8.200 at 203 South Greensboro Street, subject to the following conditions:

1. That the continued affordability of three dwelling units must be ensured through working directly with Orange Community Housing & Land Trust, in accordance with LUO Section 15-182.4.
2. That certificates of occupancy for the last three market-rate dwelling units not be issued until all three affordable dwelling units are offered for sale or rent.
3. That if the Land Trust is unable to sell any affordable unit within one year of the date it receives a certificate of occupancy, Darcon of NC, or its successors or assigns, will be released from its obligation to sell that unit to the Land Trust and may instead provide to the Town of Carrboro a payment-in-lieu of providing an affordable unit, consistent with the applicable, related LUO

language. If a payment-in-lieu is not an available option under the LUO at that time, then the developer must provide alternative means for ensuring that the affordable units comply with Section 15-182.4 of the LUO.

4. That prior to construction plan approval, the applicant must prepare and the Town Manager accept a three-party agreement between the future owner's association, Orange Community Housing & Land Trust, and the Town of Carrboro. The agreement must: 1) stipulate that either the Land Trust or the Town must verify compliance with the applicable provisions of the CUP and LUO prior to the sale / resale of any affordable unit, 2) establish and implement a one-percent transfer fee program wherein market-rate units will subsidize affordable units within the development, and 3) stipulate that the owner's association covenants must include language regarding the affordable units and properly disclose related information to purchasers of market-rate units information regarding the one-percent transfer fee program. Details regarding this condition must be presented to and approved by the Town Attorney and Town Manager prior to construction plan approval. Monies collected in the affordable housing transfer fee program, associated with the sale / resale of properties, are to be placed into a fund for the specific purpose of paying condominium and townhome Owner's Association dues for persons who acquire affordable housing.
5. Part A) That the applicant secure an additional 11 parking spaces within 400-feet of the site to serve the project prior to receiving a Certificate of Occupancy and change the building space intended for restaurants to office use unless condition 5-b is satisfied. The provision of these additional parking spaces shall be a continuing, and legally binding part of the terms of the CUP. If the applicant is unable to secure such spaces, then the applicant understands and agrees that it may be necessary to seek a permit modification to address the situation, prior to receiving a Certificate of Occupancy. Any such permit modification request will be reviewed in accordance with LUO Section 15-64, including the possibility of a new public hearing. (italicized words represent newly-added or modified language), and  
Part B) Further, that prior to any restaurant receiving approval to open in the building, the applicant must have secured sufficient additional parking spaces within 400-feet of the site to satisfy the presumptive parking requirement for the proposed restaurant square footage, prior to receiving a Certificate of Occupancy. The provision of these additional parking spaces shall be a continuing, and legally binding part of the terms of the CUP. (italicized words represent newly-added language)
6. That the applicant must receive a Town of Carrboro driveway permit for Maple Avenue Extension, and a NCDOT driveway permit if determined to be necessary, prior to construction plan approval.
7. That the Board of Aldermen finds that no screening is required along Maple Avenue Extension (eastern side of the property) as a sidewalk in this location is more beneficial to public safety than providing street trees in the area.
8. That if the applicant desires to install site and/or exterior building lighting in the future, then upon reviewing associated information staff must determine what type of permit modification is involved, per LUO Section 15-64, and process the request accordingly.
9. That prior to issuance of a building permit for the project, the applicant must record a plat that dedicates sufficient right-of-way along all sides of the property such that every adjacent right-of-way exceeds fifty-feet in width.
10. That the applicant must submit the final version of the condominium owner's association documents for review and approval by the Town Attorney prior to construction plan approval.

11. That the applicant must obtain all necessary temporary and permanent easements prior to construction plan approval.
12. That a new name for the project must be chosen and found acceptable to the Town's GIS Administrator (acting on behalf of Orange County Emergency Services) prior to construction plan approval.
13. That the applicant receive(s) CAPS from the Chapel Hill—Carrboro City Schools district pursuant to Article IV, Part 4 of the Land Use Ordinance, prior to construction plan approval.