

A RESOLUTION APPROVING THE MINOR MODIFICATION TO THE 110
BREWER LANE CUP
Resolution No. 04/2008-09

WHEREAS, the Carrboro Board of Aldermen approved a Conditional Use Permit for 110 Brewer Lane on September 20, 1994; and

WHEREAS, the Town of Carrboro Land Use Ordinance requires that substantial changes to the property constitute a minor modification to the original Conditional Use Permit; and

WHEREAS, the Board of Aldermen finds that the applicant has satisfied the requirements related to minor modifications contained in the Land Use Ordinance.

NOW, THEREFORE BE IT RESOLVED by the Carrboro Board of Aldermen that the proposed minor modification to the 110 Brewer Lane CUP which will 1) enable access to "The Butler" mixed use building, 2) expand the existing parking lot and, 3) provide new and revised infrastructure is hereby approved subject to the following conditions.

1. That the applicant be allowed to deviate from the CUP-approved parking requirement of 65 spaces by providing 82 spaces based upon their written parking justification letter provided with this agenda item (Attachment E).
2. That the existing light fixtures on the existing light poles throughout the parking area be replaced with full cutoff fixtures that are fully shielded along the all property lines.
3. That prior to construction plan approval the applicant provide to the Town evidence of a shared-access easement (or equivalent) agreed upon by the owners of the 110 Brewer Lane mixed use project so as to secure access to the proposed project at 120 Brewer Lane and that said easement will be shown and referenced on the final plat.
4. That screening gates be provided for the proposed dumpster to prevent views of the dumpster from the south, while still allowing access as needed.
5. That, prior to final plat approval, a maintenance agreement for stormwater facilities used jointly by the 110 and 120 Brewer Lane properties and their owners be approved by the Town Attorney.
6. That the applicant shall provide to the Zoning Division, prior to the recordation of the final plat for the project or before the release of a bond if some features are not yet in place at the time of the recording of the final plat, Mylar and digital as-builts for the stormwater features of the project. Digital as-builts shall be in DXF format and shall include a base map of the whole project and all separate plan sheets. As-built DXF files shall include all layers or tables containing storm drainage features. Storm drainage features will be clearly delineated in a data table. The data will be tied to horizontal controls.
7. That the developer shall include a detailed stormwater system maintenance plan, specifying responsible entity and schedule. The plan shall include scheduled

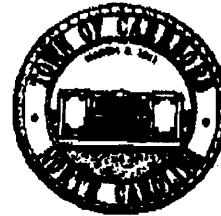
maintenance activities for each unit in the development, (including cisterns, bioretention areas, swales, check dams, and irrigation pond), performance evaluation protocol, and frequency of self-reporting requirements (including a proposed self-reporting form) on maintenance and performance. The plan and supporting documentation shall be submitted to Town engineer and Environmental Planner for approval prior to construction plan approval.

8. That prior to construction plan approval the design for the landscape island along the western property line (on the east side of "The Butler" mixed-use building) be shortened as necessary to facilitate movement of solid waste and recycling trucks, as recommended by Orange County Solid Waste.
9. That prior to construction plan approval, a shared-use and maintenance easement be approved by the Town Attorney and recorded regarding the solid waste facility arrangement for the both the 110 and 120 Brewer Lane Properties.

This the 26th day of August, 2008

TOWN OF CARRBORO

LAND USE PERMIT APPLICATION



DATE: 12/17/04

FEE: _____

APPLICANT: <u>Edwin Andrews Properties, Inc.</u>	OWNER: <u>Edwin Andrews Properties Inc.</u>
ADDRESS: <u>PO Box 545</u>	ADDRESS: <u>PO Box 545</u>
CITY/STATE/ZIP: <u>Chapel Hill, NC 27514-0545</u>	CITY/STATE/ZIP: <u>Chapel Hill, NC 27514-0545</u>
TELEPHONE/FAX: <u>919-929-8882</u>	TELEPHONE/FAX: <u>919-929-8882</u>
LEGAL RELATIONSHIP OF APPLICANT TO PROPERTY OWNER:	TAX MAP(S), BLOCK(S), LOT(S): <u>7.92. A. 21</u>
PROPERTY ADDRESS: <u>110 BREWER LANE</u>	PROPOSED LAND USE & USE CLASSIFICATION: <u>SAME</u>
PRESSENT LAND USE & USE CLASSIFICATION: <u>27.000 (1.330 & 6.110)</u>	LOT AREA: <u>1.635</u> ACRES <u>71,221</u> Square Feet
ZONING DISTRICT(S) AND AREA WITHIN EACH (including Overlay District): <u>B-1-G (RNDG OVERLAY)</u>	
# OF BUILDINGS TO REMAIN: <u>4</u>	GROSS FLOOR AREA: <u>21,900</u> Square Feet
# OF BUILDINGS PROPOSED: <u>NO NEW BUILDINGS PROPOSED</u>	GROSS FLOOR AREA (of proposed building or proposed addition): <u>(NO CHANGE)</u> Square Feet

NAME OF PROJECT/DEVELOPMENT: _____

TYPE OF REQUEST	**INFORMATION REQUESTED (Refer to Attached Key)
SUBDIV. FINAL PLAT	1, 18, 19, 21, 23, 31, 33, 34, 36
CONDITIONAL USE PERMIT (CUP)	1, 2, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 32, 34, 35, 36
<input checked="" type="checkbox"/> CUP MODIFICATION	SAME AS CONDITIONAL USE PERMIT (CUP)
SPECIAL USE PERMIT (SUP)	1, 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 32, 34, 35, 36
SUP MODIFICATION	SAME AS SPECIAL USE PERMIT (SUP)
ZONING PERMIT (Project)	1, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 22, 23, 24, 25, 26, 27, 29, 30, 32, 34, 35, 36
ZONING PERMIT (Building) Residential Infill & Additions	9, 10, 22, 24, 34, 36 (also see "Building Permit Review - Residences Only" checklist)
SIGN PERMIT	1, 10, 13, 14, 17, 20, 36
VARIANCE	4, 5, 10, 20, 29, 34, 36 Attachment A
APPEAL	4, 5, 36, Attachment B
SPECIAL EXCEPTION	1, 4, 5, 8, 10, 20, 35, Attachment C

APPLICANT: Edwin Andrews Properties, Inc.
Don White President
 OWNER: Edwin Andrews Properties, Inc.
Don White

DATE: 12/17/04
 DATE: 12/17/04

NORTH CAROLINA

ORANGE COUNTY

FILED
12 DEC 1994, at 11:28:20AM
Book 1310, Page 347 - 349
Betty June Hayes,
Register of Deeds,
Orange County, N. C.

TOWN OF CARRBORO

CONDITIONAL USE PERMIT GRANTED

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

Applicant: Donald and Brian Whittier

Owner: Donald Andrews Whittier and Brian E. Whittier

Property Location: 110 Brewer's Lane

Tax Map 92 Block A Lot 21 9788-05-1800

Proposed Use of Property: To allow construction of a mixed use development; 16 multi-family apartments and a studio for tae kwon do.

Carrboro Land Use Ordinance Use Category: 27.000; 1.330; 6.110

Meeting Date: September 20, 1994

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:

- 1) 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 lighting plan be approved by the Police Chief prior to construction plan approval.
- 4) That new curb and gutter be constructed along the applicant's portion of Brewer's Lane. Due to the location of the driveways at either end of the project, the ends of the curb and gutter section will flare to connect to the existing street.
- 5) That the owner record covenants on the property guaranteeing access by the tenants of the apartments to the weight room which is to be constructed in the tae kwon do studio. These covenants shall be reviewed and approved by the Town Attorney. Such access shall be a continuing condition of this conditional use permit.
- 6) That the applicant mulch the area under the 72-inch white oak tree, use light poles that are no higher than 15 feet, and use caution when selecting the White Indian Hawthorn.
- 7) That all necessary modifications are made to accommodate removal of the proposed fill section around the existing 72-inch oak tree to its drip line, which may mean changing the grade of the parking area.

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- 8) That a handicapped parking space be relocated to access Building Number One.
- 9) That the developer make reasonable efforts to accommodate the sewer service needs on the property owned by Marion Atwater.

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.

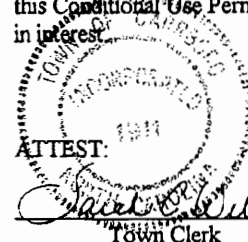
All street construction on those streets proposed for acceptance by the Town of Carrboro shall be certified by an engineer. Engineering certification is the inspection by the developer's engineer of the street's subgrade, base material, asphalt paving, sidewalks and curb and gutter, when used. The developer's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

ATTEST:

Sarah C. Williamson (SEAL)
Town Clerk

BY Robert W. Morgan
Town Manager

I, Deyana D. Arant, a Notary Public in and for said County and State, do hereby certify that Robert W. Morgan, Town Manager of the Town of Carrboro, and Sarah C. Williamson, Town Clerk for the Town of Carrboro, personally came before me this day and being by me duly sworn says each for himself that she knows the corporate seal of the Town of Carrboro and that the seal affixed to the foregoing instrument is the corporate seal of the town of Carrboro, that Robert W. Morgan, Town Manager of said Town of Carrboro and Sarah C. Williamson, Town Clerk for the Town of Carrboro subscribed their names thereto; that the corporate seal of the Town of Carrboro was affixed thereto, all by virtue of a resolution of the Board of Aldermen, and that said instrument is the act and deed of the Town of Carrboro.

IN WITNESS WHEREOF, I have hereunto set my hand and notarial seal this the 27 day of October, 1999.

My Commission Expires:

10-12-98

Deyana D. Arant
Notary Public



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I (We), Brian E. Whittier, Donald Andrews owner(s), do hereby acknowledge receipt of this Conditional Use Permit. The undersigned owner(s) do further acknowledge that no work may be done pursuant to this permit except in accordance with all of its conditions and requirements and that this restriction shall be binding upon them and their successors in interest.

Brian E. Whittier
Owner

Donald Andrews
Owner

NORTH CAROLINA
ORANGE COUNTY

I, Elizabeth Lackey, a Notary Public in and for said County and State, do hereby certify that Brian E. Whittier and Donald Andrews Whittier owner(s), personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and notarial seal this the 20th day of October, 1994.

My Commission Expires: 4-21-98

Elizabeth Lackey
Notary Public



(Not valid until fully executed and recorded)

NORTH CAROLINA - ORANGE COUNTY

The foregoing certificateS of Elizabeth Lackey + Devon D. Grant

Notaries Public of the designated Governmental units are certified to be correct. Filed for registra-
tion this the 12th day of December 1994, at 11:28:20 o'clock, AM
in Record Book 1310 Page 347

Return: _____

Betty June Hayes, Register of Deeds
By: Therilla M. Mize
~~Assistant/Deputy~~
Register of Deeds

Prepared: Town Clerk, Town of Carrboro, P.O. Box 829, Carrboro, N.C. 27510

Return To: Zoning Division, Town of Carrboro, P.O. Box 829, Carrboro, N.C. 27510

3/L1
SHEET INDEX

D.B. 129-352

2/L1
LOCATION MAP
NO SCALE

RAY ALLEN BUTLER
O.B. 205-202
D.B. 244-1072

LEGEND

POWER LINE
OPEN SPACE DEMONSTRATION
EXISTING STORM DRAIN
EXISTING SUBSTANTY SETBACK
EXISTING WATER PUMP
EXISTING OVERHEAD POWER LINE

• ZION

ATTACHMENT D-4

SOUTHERN EQUIPMENT CO.



Donald Whittier
Edwin Andrews Properties Inc
PO Box 545
CH NC 27514-0545

Jeff Kleaveland, Planner
Town of Carrboro, Planning Dept
301 West Main Street
Carrboro, NC 27510
918-7332

June 17, 2008

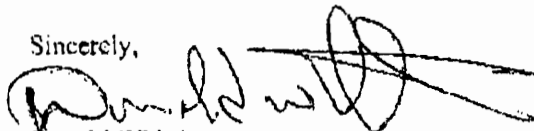
Jeff:

We are requesting an increase in parking for our 102/110 Brewer Lane Development. The reasons for this request are:

- 1) Our original approval for the apartments was just over 2 parking places per each unit when each rental has three bedrooms--the request for 16 spaces is directly related to our desire to offer a parking space to every person who rents from us. (we presently have 16 units and would like at least one parking place for each bedroom)
- 2) Overflow parking from the Taekwondo studio. When the studio has large events we are limited by parking. Increased parking will help alleviate the on street parking that happens during these events.
- 3) Potential for expansion of our development. Increasing our parking would hopefully give us the option to further develop our property either commercially or with residential units. We have not looked into this as of yet, though we do know that one of our limiting factors is parking.

If you have other questions regarding why we'd like to increase the parking for our development please feel to contact me directly at 919-260-2020.

Sincerely,



Donald Whittier
Edwin Andrews Properties Inc



MICHAEL A. NEAL & ASSOCIATES, PLLC
ENGINEERS, SURVEYORS, AND PLANNERS
105 West Corbin Street, Suite 201
Hillsborough, North Carolina 27278
(919) 644-1277 mneal-mana@intrex.net

June 18, 2008

Town of Carrboro
Mr. Jeff Kleaveland
301 West Main Street
Carrboro, North Carolina 27510

RE; 110 Brewer Lane Nonconformity:

Dear Kleaveland:

The applicant is requesting a minor modification to the approved CUP for 110 Brewer Lane, the proposed minor modification will be the addition of parking areas, access drives and re-location of the existing stormwater management facility. The proposed "new development" will meet the requirements of the Town. The 110 Brewer Lane project was approved in 1994, in the 14 years since it's approval the Town has adopted amendments to the Land Use Management Ordinance. Some elements of the entire project which were conforming at the time the project was approved now are nonconforming due to changes in the Land Use Management Ordinance. Section 15-64 states, "*However, (i) any new development authorized by the permit change shall comply with current standards to the extent reasonably practicable, and (ii) the permit issuing authority may require the elimination of nonconforming situations when the cost (financial and otherwise) of doing so is clearly proportional to the benefits of elimination of such nonconformity.*"

The existing 110 Brewer Lane project has become nonconforming, in the following areas, which we ask that the Board not exercise its authority to eliminate these nonconformities" for the following reasons:

Downtown Livability Area (DLA) and Urban Amenities (Sec. 204). The existing 110 Brewer Lane has several areas which qualify as DLA under the ordinance, sidewalks, gardens, and an interior court yard. These areas make up 5,740 sq ft of DLA, the current ordinance would require approx. 8,610 sq ft or 2,870 sq ft additional. The site as currently developed does not have an addition 2,870 sq ft of unused area that could be converted to uses which would qualify as DLA. To provide this area would require the disruption of the current livability area used by the residence, and disrupter the common

space and general tranquility. Based on this we believe that the benefits of elimination of this nonconformity do not outweigh the benefit of providing it to the residence of 110 Brewer Lane. Additional, the minor modification application for 110 Brewer Lane was submitted prior to the adoption of this section of the LUO.

Recreation requirements (15-198). Under the current LUO the 16 units of 110 Brewer Lane would be required to provide $16 \text{ du} \times 11.81 \text{ pts/du} = 188.96$ recreation points. There is a 6500 sq ft Tae Kwan Do studio on the property, which the residence and public can use, there is a fee for this use similar to those fee charged by the Town's recreation Department for similar recreation activities. The site is currently fully developed so no room is available to provide additional recreation facilities to meet the required 189 point. Therefore a payment in lieu would be needed to bring this into conformity, this payment would amount to \$35,332, we feel that this cost is disproportionate to the benefits it will provide.

Stormwater Management (15-261 –15-269) When the 110 Brewer Lane site was developed in 1994, the Town required that only the peak rate of discharge up to the 10 year storm be controlled for down stream properties. Currently the Town not only has requirements to control the peak rate of discharge but also has requirements to reduce water pollution. The new development associated with this minor modification complies with all current Town stormwater regulations. We were able to improve the entire site, new and existing developments control of the peak rate of runoff for all storms up to and including the 100 yr. by reducing the downstream impacts. To mitigate the water quality for that portion of the site that exists and no new development is taking place would require additional land, and as mentioned above the site has spatial constraints which does not facilitate the addition of stormwater quality facilities.

Exterior Lighting (15-198 & 243) The lighting for the new development will meet the current ordinance, however the portion to remain does not meet the ordinance. The masts (poles), which the lights are mounted on, meet the current ordinance but the fixtures exceed the illumination provisions. Relocating some poles and fixtures would correct some of the illumination nonconformities. We feel that the replacement of the light fixtures, relocations of some poles, and the rewiring of the entire outdoor lighting, in addition with the disruption to the residence does not warrant this work. We are unaware of any complaints about the current lighting.

If you have any questions please feel free to call me.

Sincerely,

Michael A. Neal, PE, PLS