

ATTACHMENT A

A RESOLUTION APPROVING THE EXTENSION OF THE DATE ON WHICH A CUP WOULD OTHERWISE EXPIRE FOR THE SHOPPES AT JONES FERRY COMMERCIAL DEVELOPMENT AT 405 JONES FERRY ROAD

Resolution No. 135/2008-09

WHEREAS, the Carrboro Board of Aldermen approved a Conditional Use Permit for The Shoppes at Jones Ferry Commercial Development at 405 Jones Ferry Road on September 25th, 2007; 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;

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 good faith, and 3.) conditions have not changed so substantially as to warrant a new application.

NOW, THEREFORE BE IT RESOLVED that the Carrboro Board of Aldermen that the expiration date for The Shoppes at Jones Ferry Conditional Use Permit is hereby extended to September 25th, 2010.

STAFF REPORT

TO: Board of Aldermen

DATE: June 16th, 2009

PROJECT: Conditional Use Permit Extension Request for The Shoppes at Jones Ferry Commercial Development at 405 Jones Ferry Road

APPLICANT: Northwest Property Group
PO Box 537
Skyland, NC 28776

OWNER: Calvin and Nora Mellot
PO Box 336
Carrboro, NC 27510

PURPOSE: Request for an extension of date when Conditional Use Permit would otherwise expire for The Shoppes at Jones Ferry Commercial Development.

EXISTING ZONING: M1- Light Manufacturing

TAX MAP NUMBER: 7.101.A.1 & 7.101.A.1A

LOCATION: 405 Jones Ferry Road

TRACT SIZE: 7.71 acres or 335,858 sq. ft.

EXISTING LAND USE: Construction Yard- Permissible Use #3.220

PROPOSED LAND USE: Use# 2.110- High-Volume Traffic Generation Sales

SURROUNDING LAND USES: North: M1- OWASA/Jones Ferry Road
South: R-7.5- University Lake Apartment
East: R-7.5- Single-family residences/Barnes Street
West: R-7.5- Abbey Court Condos

ZONING HISTORY: M1, since 1980

RELEVANT ORDINANCE SECTIONS: Section 15-62 Expiration of Permits

BACKGROUND

Northwest Property Group has requested an extension of the date on which a previously approved Conditional Use Permit (CUP) would otherwise expire. The Board of Aldermen originally granted the Conditional Use Permit on September 25th, 2007 (**Attachment D**). The CUP allowed for a commercial development consisting of three buildings for a total square footage of approximately 77,700 square feet.

Upon realizing that the permit expiration date was nearing, staff contacted Northwest Property Group to discuss the possibility of seeking an extension. Presently, this CUP is being deliberated in the court system due to “conditions” placed on the project. 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 expire on September 25th, 2009 in this case (i.e.- two years after the date of issuance) 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, this CUP is being deliberated in the court system due to “conditions” placed on the project, 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 September 25th, 2009 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. As previously mentioned, this CUP is being deliberated in the court system due to "conditions" placed on the project.*

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.*

RECOMMENDATION

The Town Staff recommends that the Board of Aldermen adopt the attached resolution (**Attachment A**) approving the permit extension request. The new expiration date for the permit would be September 25th, 2010.



**BALLENTINE
ASSOCIATES, P.A.**

221 Providence Road
Eastowne Office Park
Chapel Hill, NC 27514

919/929-0481 Chapel Hill
919/489-4789 Durham
919/489-2803 Fax

20 May 09

Mr. James Thomas
Town of Carrboro Planning Department
301 West Main Street
Carrboro, NC 27510

Re: Shoppes @ Jones Ferry
405 Jones Ferry Road
Tax Map, Block, Lots: 7.101.A.1 and 7.101.A.1A
BA Proj. # 105012.00 Vol. II "T"

Dear James:

As you are aware, the Board of Aldermen approved a Conditional Use Permit for this project at their meeting on 25 Sep 07. In accordance with Section 15-62 of the Carrboro Land Use Ordinance, this permit will expire in two years if work has not begun. This letter is to request that the Board of Aldermen approve a one-year extension of the CUP.

We will deliver the \$300 fee required for this request under separate cover.

Please don't hesitate to call me should you have any questions or if you need additional information.

Sincerely,
BALLENTINE ASSOCIATES, PA

George J. Retschle, PE
Vice President

Distribution: James Thomas
Greg Edney
File

Enclosures: None

<p>PREPARED BY AND RETURN TO:</p> <p>TOWN CLERK TOWN OF CARRBORO 301 West Main Street CARRBORO, NORTH CAROLINA 27510</p>
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**ORANGE COUNTY
NORTH CAROLINA**

**TOWN OF CARRBORO
CONDITIONAL USE PERMIT GRANTED
Commercial Development – 405 Jones Ferry Road**

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: Northwest Property Group
OWNERS: Calvin and Nora Mellott
PROPERTY LOCATION (Street Address): 405 Jones Ferry Road
TAX MAP, BLOCK, LOT(S): 7.101.A.1 and 7.101.A.1A
PROPOSED USE OF PROPERTY: Construction of a commercial development consisting of three buildings. One building (proposed grocery store) will be 52,250 square feet in size and the second building will consist of eleven individual shops will be 17,550 square feet in size. The third building will consist of five individual shops with 7,900 square feet.
CARRBORO LAND USE ORDINANCE USE CATEGORY: 2.110 (High Volume Traffic Generation Sales)
MEETING DATES: September 18 and September 25, 2007

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 submitted to the Development Review 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 applicant must obtain a driveway permit from Town of Carrboro and NCDOT prior to Construction Plan approval.
4. That the applicant shall provide to the Zoning Division, prior to the release of the Certificate of Occupancy or before the release of a bond if some features are not yet in place at the time of wishing to obtain the Certificate of Occupancy, Mylar and digital as-builts for the stormwater features of the project. Digital as-builts shall be 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.
5. That fire flow calculations and building-sprinkler design (as required) must be submitted and approved by the Town Engineer and Town Fire Department prior to construction plan approval.
6. That an engineer must verify compliance with LUO Section 15-243(d)'s light pollution limits of 0.2 foot candles across property lines by sealing a plan for all proposed lighting prior to Construction Plan approval.
7. That the Appearance Commission review the proposed outdoor seating area and fountain at the corner of Barnes Street and Jones Ferry Road as a courtesy review prior to installation.
8. That additional right-of-way at the corner of Barnes Street and Jones Ferry Road be dedicated to the Town of Carrboro and NCDOT for the possible future installation of a round about at this intersection prior to the Certificate of Occupancy being issued for the proposed buildings. Amount right of way dedication shall be sufficient to construct 120 foot diameter roundabout.
9. That all temporary and/or permanent construction and drainage easements be obtained prior to Construction Plan approval. The storm water easement on University Lake Apartments shall be reviewed and approved by the Town Attorney and must include language specifically disclosing that the property owner has received and acknowledged the complete stormwater report (stormwater plans, calculations, etc) for the project.
10. That the proposed sidewalk along Barnes Street be constructed as proposed in the original application and that additional street right-of-way be dedicated to the town, if necessary, prior to construction plan approval to construct the sidewalk.
11. That per Section 15-291 of the LUO, the Board of Aldermen hereby finds that 348 parking spaces is sufficient to serve the proposed development, based on information submitted by the applicant regarding proximity to both nearby residential neighborhoods and bus lines.
12. That curb stops be added to parking areas adjacent to landscaping and sidewalks per Sections 15-295(b) and 15-317(d) of the LUO prior to Construction Plan approval.
13. That prior to issuance of Construction Plan approval, the applicant must continue to work with the Town and NCDOT on improving the Jones Ferry Road / Barnes Street intersection. The applicant hereby agrees to install a traffic signal prior to receiving a Certificate of Occupancy if permitted by NCDOT and / or other possible improvements to the intersection, as determined necessary in the granting of a driveway permit.

14. That the applicant relocate the Barnes Street entrance/exit closer to Jones Ferry Road as shown in Attachment D of the September 25, 2007 agenda item. Attachment D must be recorded with the CUP as an attached exhibit. The relocated entrance/exit onto Barnes Street will be reviewed and approved by town staff and the town engineer prior to Construction Plan Approval. If changes to the schematic design are necessary, then such changes are subject to LUO Section 15-64, including the possibility of an additional public hearing. This relocated entrance/exit will be restricted to emergency use only and that appropriate bollards or other physical devices shall be erected to prevent the movement of traffic other than emergency vehicles.
15. That the applicant include a more diverse selection of landscaping plantings.
16. That the applicant include more North Carolina native plantings.
17. That the applicant provide more bike racks in high-visibility locations.
18. That the developer provide pedestrian "stub-outs" to facilitate future walking connections with Carolina Apartments and University Lake Apartments.
19. That the developer add two more "tree islands" by eliminating eight (8) parking spaces at the center of the vehicle accommodation area, to be planted with shade tree varieties.
20. That all buildings should utilize Energy Star rated reflective roofs.
21. That the developer provide some of the shops along Jones Ferry and Barnes Street with ceilings high enough to enable construction of mezzanine areas with eight (8) foot ceilings (such as are found at Cameron's and Kitchen Works in University Mall).
22. That the developer re-design and expand paving areas outside and adjacent to the storefronts along Jones Ferry and Barnes Street so that some merchants will have room for outdoor activities.
23. That the developer provide one additional stair to connect the Jones Ferry sidewalk with the paving along the storefronts.
24. That the developer provide a sheltered waiting area for the bus stop along Jones Ferry Road.
25. That the developer explore with staff ways to maximize safety for pedestrians and cyclists at both ingress/egress locations of the vehicle accommodation area.
26. That the number of covered bike parking spaces in front of the Harris Teeter building is increased to 18 and the other shops will have a minimum three bike racks with a minimum capacity of six bikes such that one of those racks is near the proposed fountain and the other two are in front of the shops and that some of those spaces are covered. The developer should look at the recommendations on file with the town for types of acceptable bicycle racks.
27. That there will be pavement markings and a minimum of two speed humps internal to the site to slow traffic and increase awareness of pedestrian movement.
28. That all crosswalks are designed for maximum visibility using paint and texture.
29. That there be a sheltered waiting area for E-Z Rider patrons.
30. That raised concrete or planted medians are used on Jones Ferry where the current plan show painted striping for the turn lanes.

31. Soon after occupancy and for a period of up to one year the applicant will conduct traffic counts on Jones Ferry Road and Barnes Street to reevaluate the need for a traffic signal.
32. That the applicant refer to Appendix E of the Carrboro Land Use Ordinances which provides a suggested list for native plants for landscaping.
33. That the applicant work with the town staff to provide pedestrian and bicycle connectivity to surrounding neighborhoods in cooperation with neighbors.
34. That the applicant extend pedestrian access to adjacent residential properties.
35. That during the construction process that all contractors and subcontractors be made aware of the town's noise ordinance as it pertains to construction and that the tenants of the development also be made aware of the noise, light and odor ordinances as they pertain to surrounding residential neighborhoods.
36. That all construction traffic be limited to access from Jones Ferry Road and that appropriate signage be installed indicating where construction traffic may and may not go.

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.

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 CARRBORO

ATTEST:

_____(SEAL) BY _____
Town Clerk Town Manager

I, _____, a Notary Public in and for said County and State, do hereby certify that 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 Steven E. Stewart, 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 THEREOF, I have hereunto set by hand and notarial seal this the ____ day of _____, 20__.

(SEAL)

Notary Public

My Commission Expires: _____

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)**

ATTACHMENT E-2

- (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.