

ATTACHMENT A

**A RESOLUTION APPROVING THE EXTENSION OF THE DATE ON WHICH A
CUP WOULD OTHERWISE EXPIRE FOR THE MATTHEW'S FAMILY BUILDING
AT 609 HIGHWAY 54 WEST
Resolution No. 136/2008-09**

WHEREAS, the Carrboro Board of Aldermen approved a Conditional Use Permit for The Matthew's Family at 609 Highway 54 West 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 Matthew's Family Building 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 Matthew's Family Building at 609 Highway 54 West

APPLICANT: Bud Matthews
205 Severin Street
Chapel Hill, NC 27516

OWNER: W3M, LLC
205 Severin Street
Chapel Hill, NC 27516

PURPOSE: Request for an extension of date when Conditional Use Permit would otherwise expire for The Matthew's Family Building project.

EXISTING ZONING: B-5- Watershed Commercial

TAX MAP NUMBER: 7.113.B.22

LOCATION: 609 Highway 54 West

TRACT SIZE: 2.08 acres/90,797 square feet

EXISTING LAND USE: Vacant- existing masonry building on-site

PROPOSED LAND USE: Use# 3.120, 2.120, 2.130, 2.220, 2.230 & 3.220

**SURROUNDING
LAND USES:** North: Street Right-of-Way
South: WR- Single Family Residence
East: B5- Vacant
West: WR- Single Family Residence

ZONING HISTORY: B5, since 1983

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

BACKGROUND

The property owner, Mr. Bud Matthews, has requested an extension of the date on which a previously issued 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 the renovation of the existing 3,200 square foot building and the construction of metal type prefabricated building that is approximately 3,000 square feet in size.

Upon realizing that the permit expiration date was nearing, staff contacted Mr. Matthews to discuss the possibility of seeking an extension. In a letter submitted to staff regarding this matter, Mr. Matthews cited market conditions and economic factors as reasons why he has not moved forward expeditiously with construction of the project (**Attachment C**).

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, Mr. Matthews has been trying to obtain financing, 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. Mr. Matthews has actively been trying to obtain financing for the project. Due to the economic downturn, Mr. Matthews has been unable to obtain the appropriate financing for the project. Mr. Matthews states in his letter that he has every intention of building 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.

BUD MATT

ATTACHMENT C-1

NC.



**Chapel Hill, NC 27516
(919) 929-0203**



21 May 2009

Town of Carrboro
Planning, Zoning, Inspections Department
301 West Main Street
Carrboro, NC 27510

Attachment C

Attn: Mr. Marty Roupe
Mr. James Thomas

Reference: CUP Extension
Matthews Family Building
Carrboro, NC

Dear Mr. Roupe:

A Conditional Use Permit (CUP) was granted to W3M, LLC on 27 September 2007, in order to develop the Matthews Family Building at 609-611 NC 54 W, Carrboro, NC. Phase I of the project consists of remodeling an existing ~3,000-sf structure, constructing a parking lot and associated stormwater facilities. In a subsequent phase, a second 3,000-sf building will be constructed. Although the construction plans for this project were completed and approved by the Town, the existing CUP will expire because the use authorized by the CUP has not commenced and because less than 10% of the total cost of construction authorized by the CUP has been completed. W3M, LLC, the CUP holder represented by Mr. Bud Matthews, requests that the current CUP, due to expire 26 September 2009, be extended for one year.

As is discussed in the Town of Carrboro LUO, section 15-62(c), a CUP may be extended for one year and in additional one-year increments provided three conditions are satisfied. In summary, these conditions are: 1) the existing permit has not expired; 2) the permit recipient has proceeded with due diligence and in good faith; and 3) the conditions have not changed so substantially as to warrant a new application. These three conditions are satisfied by W3M, LLC on this project. Unfortunately, despite the developers' desire to complete this project, financing has not been available due to the current business climate. When financing becomes available, the developer intends to commence with this project, as originally planned.

W3M, LLC believes that completion of the Bud Matthews Building project will not only be of economic benefit to the Town of Carrboro, but will also provide substantial visual

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improvement to the Town's western entrance. Please consider and approve this request for a CUP extension of one-year.

If additional information is necessary, please do not hesitate to contact W3M, LLC at (919) xxx-xxx.

919-9290203

968-8151

Sincerely,
W3M, LLC

A handwritten signature in black ink, appearing to read "Bud Matthews". The signature is fluid and cursive, with the first name "Bud" being more prominent than the last name "Matthews".

Bud Matthews

M
Sw3

FILED Joyce H. Pearson
Register of Deeds, Orange Co., NC
Recording Fee: \$23.00
NC Real Estate TX: \$.00

20071105000321430 PRMIT
Bk:RB4404 Pg:489
11/05/2007 01:44:58 PM 1/4



<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 – 609 Highway 54 West**

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: Bud Matthews <i>W3M</i>
OWNERS: W3M, LLC
PROPERTY LOCATION (Street Address): 609 Highway 54 West
TAX MAP, BLOCK, LOT(S): 7.113.B.22 <i>9769.21-9460 mab</i>
PROPOSED USE OF PROPERTY: Two commercial buildings. The first building is an existing one-story masonry building that is 3,200 square feet in size. The second building will be 3,000 square feet prefab metal-type building.
CARRBORO LAND USE ORDINANCE USE CATEGORY: 3.120, 2.120, 2.130, 2.220, 2.230 and 3.220
MEETING DATES: 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 NCDOT prior to construction plan approval.
4. That the applicant shall provide to the town's Zoning Division, prior to 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 prior to construction plan approval, an engineer certify that the impervious surface of the proposed development does not surpass twenty-four percent (24%).
6. That cut-off lighting fixtures shall be used.

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.

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.