A RESOLUTION APPROVING AN EXTENSION OF THE DATE ON WHICH A CUP WOULD OTHERWISE EXPIRE FOR THE ALBERTA MIXED USE PROJECT AT 300 ROBERSON STREET Resolution No. 141/2008-09

WHEREAS, the Carrboro Board of Aldermen approved a Conditional Use Permit for The Alberta Mixed Use Project at 300 Roberson Street on September 11, 2007; and

WHEREAS, Section 15-62(a) of the Town of Carrboro Land Use Ordinance states that a Conditional Use Permit 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; and

WHEREAS, the applicant now seeks an extension of the date on which a Conditional Use Permit otherwise would expire; and

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

NOW, THEREFORE BE IT RESOLVED by the Carrboro Board of Aldermen that the expiration date for The Alberta Mixed Use Project Conditional Use Permit is hereby extended to September 11, 2010.

STAFF REPORT

TO:

Board of Aldermen

DATE:

June 16, 2009

PROJECT:

Conditional Use Permit Extension Request for The Alberta

Mixed Use Project at 300 Roberson Street

APPLICANT:

N. R. Milian Associates

(Nathan Milian)

200 North Greensboro Street

Carrboro, NC 27510

OWNER:

Carr Mill Limited Partnership

200 North Greensboro Street

Carrboro, NC 27510

PURPOSE:

Request for an extension of date when Conditional Use

Permit would otherwise expire for The Alberta Mixed Use

Project.

EXISTING ZONING:

B-1(g)-CU, Business-1(general)—Conditional Use Zoning

TAX MAP NUMBER:

7.99.D.19B (building site)

LOCATION:

300 Roberson Street (building site)

TRACT SIZE:

2.095 acres total [25,227 square feet (0.58 acres) building

site]

EXISTING LAND USE:

Building site – Parking Lot

PROPOSED LAND USE:

Building Site – 1.330, 2.110, 2.120, 3.110, 3.120, 3.130,

8.100

SURROUNDING

LAND USES:

North: B-1(c), Retail, Office, and Restaurant Uses

South: R-3, Roberson Place Subdivision

East: B-1(g), Health Clinic

West: B-1(g), South Orange Rescue Squad

ZONING HISTORY:

B-1(g) & B-2, Since 1986; B-1, Prior to 1986

RELEVANT

ORDINANCE SECTIONS: Section 15-62 Expiration of Permits

BACKGROUND

The property manager of 300 Roberson Street, Mr. Nathan Milian, has requested an extension of the date on which a previously issued Conditional Use Permit (CUP) would otherwise expire (Attachment C). The Board of Aldermen originally granted the Conditional Use Permit on September 11, 2007. The CUP allows construction of a three-story office and retail building at the corner of Roberson Street and Sweet Bay Place.

Upon realizing that the permit expiration date again was nearing, Mr. Milian submitted a letter requesting an extension. In the letter, Mr. Milian cites market conditions and economic factors as reasons why he has not moved forward expeditiously with construction of the project (see 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. Specifically, please note that Section 15-62(a) of the LUO dictates that the CUP will expire on September 11, 2009, if the extension is not granted and if 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. Milian has been actively marketing the project to prospective tenants and attempting to secure 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 will expire on September 11, 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. Milian has actively marketed the project to prospective tenants and tried to secure financing. Due to various factors related to the economy, Mr. Milian has been unable to date to secure necessary financing to move forward with construction.

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.

4. Successive extensions may be granted for periods up to one year upon the same findings.

COMPLIANCE:

This is the first such request for this particular project.

RECOMMENDATION

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 will be September 11, 2010.



May 13, 2009

Board of Aldermen c/o Marty Roupe Planning Dept. Town of Carrboro 301 West Main Street Carrboro, North Carolina 27510

Dear Board,

Carr Mill Mall limited Partnership would like to request an extension of the Alberta's C.U.P., pursuant to LUO 15-62.

There are three conditions for granting an extension:

1. The permit has not yet expired. Our permit expires in September.

- 2. Applicant proceeded with due diligence and in good faith. Since approval of the CUP we have finalized our plans and engineering, selected our general contractor, begun a marketing program and commenced presales. Unfortunately, no one could have predicted the disastrous economic crash brought on by the near collapse of the stock market and the nations banking system, or the subsequent evaporation of lending for new projects. Additionally, the collapse of home mortgage lending brought about a collapse in values, which has made banks very leery of all new residential appraisals. This further complicates the ability for buyers to home mortgages, which is integral to beginning our project.
- 3. Conditions have not changed substantially as to warrant a new application. We firmly believe our building will be great benefit to the community and the downtown in particular and is designed as to be in harmony with downtown and surrounding neighborhoods.

Please consider and approve our request for the extension of the Alberta C.U.P.

Sincerely,

Nathan R. Milian, CSM

Cc: Jack Haggerty