

A RESOLUTION APPROVING AN EXTENSION OF THE DATE ON WHICH A  
CUP WOULD OTHERWISE EXPIRE FOR ROBBERSON SQUARE CUP

WHEREAS, the Carrboro Board of Aldermen approved a Conditional Use Permit for Roberson Square CUP in February 2008; and

WHEREAS, the original CUP expiration date was extended by state legislative action to January 1, 2013 in response to the economic crisis; 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 Roberson Square Conditional Use Permit is hereby extended to January 1, 2014.

**STAFF REPORT**

TO: Board of Aldermen

DATE: October 16, 2012

PROJECT: Roberson Square CUP

APPLICANT  
And OWNERS: Mr. Elias Schtakleff  
Raleigh, NC

PURPOSE: Conditional Use Permit Extension Request for Roberson  
Square CUP

EXISTING ZONING: B-1(g), General Business

TAX MAP NUMBER: 7.99.D.1

LOCATION: 203 South Greensboro Street

TRACT / BUILDING SIZE: 0.883 acres total (38,463 square feet) / 91,575 sf, building

EXISTING LAND USE: Parking lot

PROPOSED LAND USE: Use 27.000, Combination, 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, and 3.250

SURROUNDING  
LAND USES: North: B-1(c), Roberson Street right-of-way  
South: R-7.5, Carr Street right-of-way  
East: B-1(g), Maple Avenue Extension right-of-way  
West: B-1(g), South Greensboro Street right-of-way

ZONING HISTORY: B-1(g) Since 1986; B-1 Prior

## BACKGROUND / INFORMATION

Mr. Elias Schtakleff has requested an extension of the date on which a previously issued Conditional Use Permit (CUP) would otherwise expire on January 1<sup>st</sup>, 2013. Mr. Schtakleff has submitted a letter explaining the current status of the project and reasons for requesting an extension (**Attachment C**). The permit, originally issued on February 26, 2008 (**Attachment D**), allows for construction of a five-story mixed-use building with eighteen (18) residential units and 26,381 square feet of commercial space (**Attachment E**). Construction of the project has not commenced.

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.

State legislative action in response to the economic crisis of 2008 allowed building permits throughout the state to have their expiration dates extended. The Roberson Square project was affected by this and has had its original expiration date extended to January 1, 2013 as a result.

## APPLICABLE LUO PROVISIONS

Additional extensions to this permit require Board approval in accordance with Section 15-62 (Expiration of Permits) of the LUO (**Attachment F**). Since work has not begun on the project the provisions of Section 15-62(c) must be satisfied in order for the Board to extend the permit:

*“(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 these provisions::

**1. The permit has not yet expired.**

COMPLIANCE: *Yes, it is true that the permit has not yet expired.*

**2. The permit recipient has proceeded with due diligence and in good faith.**

COMPLIANCE: *Yes. The owner has explained in their letter what efforts have been made and various factors that have prevented project construction from beginning.*

**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 and no new changes are proposed to the original project.*

**RECOMMENDATION**

Town Staff recommends that the Board of Aldermen adopt the attached resolution (**Attachment A**) approving the request. The new expiration date for the permit will be January 1, 2014.

September 9, 2012

Mr. Marty Roupe  
Zoning Dept  
Town of Carrboro  
301 W. Main Street  
Carrboro, NC 27510

Subject: CUP Permit Extension for Roberson Square Mixed Use Building

Dear Marty,

Following our recent communications regarding the above subject and as the permit for the above project will automatically expire on January 1<sup>st</sup> 2013, we respectfully request the Board of Aldermen to extend the permit for one year.

In accordance with Land Use Ordinance Section 15-62(c)(ii) and (iii), the Owners/ Developers of Roberson Square have “proceeded with due diligence and in good faith” and that “conditions have not changed so substantially as to warrant a new application.” Our understanding is that “extensions may be granted without resort to the formal processes and fees required for a new permit.”

The Owners of Roberson Square Mixed Use Project realized the potential of investing in downtown Carrboro. They acquired the property back in 1992 and operated it as Andrews Riggsbee hardware store until 2003. In 2003 and upon reviewing the Vision 20/20 plan for downtown Carrboro, the Owners embarked on a mission to construct a building in order to create a strong image of Carrboro, create more jobs and to attract professionals to work and live in the town. The Owners hired a well-known architect, Mr. David Ripperton, who designed a building fit to be the hallmark of downtown Carrboro’s vibrant community and would contribute hundreds of thousands of dollars to the town tax base.

The Owners commenced the project design in September 2003 and it took them almost five years to obtain the CUP permit on 26 February 2008. Unfortunately, being a unique property and adjacent to a residential neighborhood in downtown Carrboro, the architect faced many challenges. However, with the determination of the Owners to keep moving forward with obtaining the permit despite the tremendous opposition that this project faced, the permit was finally obtained. Examples of the difficulties faced were:

- 1- The introduction of DNP ordinance creating an overlay district over the B1G zoning to establish Architectural Standards for downtown Carrboro.  
Adopted by the Board of Aldermen in June 2006. Design was put on hold.
- 2- Amendment to LUO regarding open space and Livability requirements in the zoning district.
- 3- LUO amendment regarding width of ROW dedication on Roberson street
- 4- Scheduling of multiple hearings and feedback from different neighborhood and advisory committees.
- 5- Coordination with Duke Power and OWASA.

Notwithstanding that the permit was received at the start of the worldwide economic recession, the Owners kept looking for funding sources to keep moving forward. The Architectural, Structural, Mechanical and Plumbing construction drawings continued. The Owners elected to hold on to the property paying all carrying costs, architectural/engineering fees and taxes until the market improved and lending resumed.

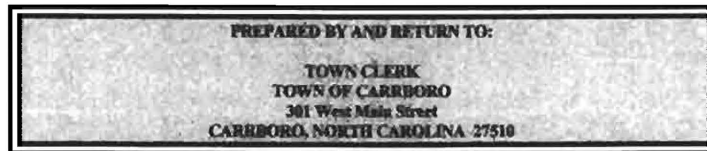
As of this date, the real estate market has deteriorated more than anybody anticipated and the supply of commercial and residential spaces far exceeded demand. The Owners are moving in good faith to keep the momentum and are optimistic that 2013 will bring better times and will be able to construct the project.

Given the above arguments, we are seeking a one-year extension in the hope that commercial construction activity which has been at a standstill in the nation as a whole and in Downtown Carrboro in particular will recover and move forward.

Please call me if you have any questions,

Thank you for your attention,

Elias Schtakleff  
Owner of Roberson Square  
4008 Ovid Lane  
Raleigh, NC 27613  
Mobile (919) 868-9179



**ORANGE COUNTY  
NORTH CAROLINA**

**TOWN OF CARRBORO  
CONDITIONAL USE PERMIT GRANTED  
Roberson Square Mixed Use Building**

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:

<b>APPLICANT:</b> Darcon of N.C., Inc.
<b>OWNERS:</b> Darcon of N.C., Inc.
<b>PROPERTY LOCATION (Street Address):</b> 203 South Greensboro Street
<b>TAX MAP, BLOCK, LOT(S):</b> 7.99.D.1
<b>PROPOSED USE OF PROPERTY:</b> To allow for the construction of a five-story mixed use building.
<b>CARRBORO LAND USE ORDINANCE USE CATEGORY:</b> 27.000, Combination, 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, and 3.250
<b>MEETING DATES:</b> January 22 and February 26, 2008

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 continued affordability of three dwelling units must be ensured through working directly with Orange Community Housing & Land Trust, in accordance with Land Use Ordinance Section 15-182.4.
4. That certificates of occupancy for the last three (3) market-rate dwelling units not be issued until all three (3) affordable dwelling units are offered for sale or rent.
5. That if Orange Community Housing and 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 OCHLT and may instead provide to the Town of Carrboro a payment-in-lieu of providing an affordable unit, consistent with the applicable, related Land Use Ordinance language existing at the time of execution of this Conditional Use Permit.
6. 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 conditional use permit and Land Use Ordinance 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.
7. That only retail and office uses be allowed in the commercial area.
8. 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.
9. 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.
10. 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 Land Use Ordinance Section 15-64, and process the request accordingly.
11. 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.
12. 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.
13. That the applicant must obtain all necessary temporary and permanent easements prior to construction plan approval.



14. 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.
15. That seven (7) parking spaces and a landscaped (xeriscaped) area be provided along Carr Street.

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: \_\_\_\_\_

Darcon of N.C., Inc.

BY: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Secretary

STATE OF NORTH CAROLINA  
\_\_\_\_\_  
COUNTY

This the \_\_\_\_ day of \_\_\_\_\_, 2009, personally appeared before me, \_\_\_\_\_, a Notary Public in and for said County and State; \_\_\_\_\_, who being by me duly sworn, says that she knows the common seal of \_\_\_\_\_ and is acquainted with \_\_\_\_\_, who is the \_\_\_\_\_, and saw the \_\_\_\_\_ sign the foregoing instrument and that he/she, Secretary of aforesaid, affixed said seal to said instrument, and signed her name in attestation of the execution of said instrument in the presence of said \_\_\_\_\_.

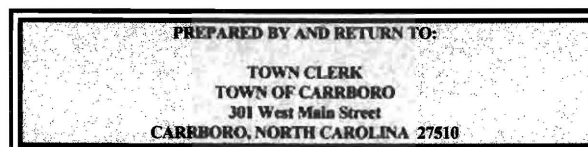
WITNESS my hand and notarial seal, this the \_\_\_\_ day of \_\_\_\_\_, 2009.

(SEAL)

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

(Not valid until fully executed and recorded)



**SP-1**

**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

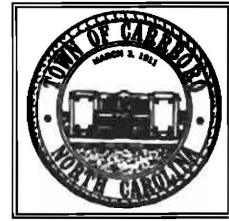
## ATTACHMENT F

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.

# TOWN OF CARRBORO

## BOARD OF ADJUSTMENT



### PERMIT EXTENSION WORKSHEET

#### I. FINDINGS REQUIRED BY SECTION 15-62(c)

A. The permit has not yet expired.

- ☐ Yes  
☐ No

B. The permit recipient has proceeded with due diligence and in good faith.

- ☐ Yes  
☐ No

C. Conditions have not changed so substantially as to warrant a new application.

- ☐ Yes  
☐ No

#### II. GRANTING THE PERMIT EXTENSION REQUEST

- ☐ The Permit Extension Request is granted, extending the expiration date of the previously issued Special Use Permit by a period of one year from the date on which it would otherwise expire.

#### III. DENYING THE PERMIT EXTENSION REQUEST

- ☐ The Permit Extension Request is denied because it fails to comply with the ordinance requirements set forth above in Section I.