

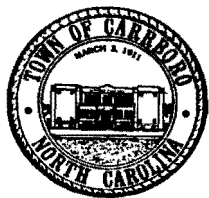
**A RESOLUTION ACCEPTING A REPORT ON AGREEMENT BETWEEN
PROPERTY OWNER AND REPRESENTATIVE NEIGHBORS REGARDING
901 WEST MAIN STREET (JOHNNY'S)
Draft Resolution No. 75/2012-13**

WHEREAS, the Carrboro Board of Aldermen hereby receives the report on agreements between the property owner of 901 West Main Street and a representative group of neighbors; and

WHEREAS, the best approach identified is issuance of a Zoning Permit under LUO Section 15-126, which will incorporate all matters of agreement as binding.

NOW, THEREFORE BE IT RESOLVED by the Carrboro Board of Aldermen that the Board of Aldermen thanks both the property owner and representative group of neighbors for successfully and cooperatively working with one another. The Board hopes this will allow this local business to thrive and succeed moving forward in a manner that is not disruptive to the surrounding neighborhoods.

This the 15th day of January, 2013.



TOWN OF CARRBORO

NORTH CAROLINA
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Attachment B

September 14, 2012

Johnny's Gone Fishin'
901 West Main Street
Carrboro, NC 27510
Attention: Jan Halle, Kevin Morgan, Duncan Morgan, and Megan Fee

Re: Request to Cease Wine Tasting Events and Live Music Performances at Johnny's Gone Fishing, 901 West Main Street

Dear Dr. Halle et al,

It has come to the Town's attention that wine tasting events and live music have been occurring at 901 West Main Street. More specifically, five (5) different individuals have complained one or more times about specific, recent occurrences. Specific instances noted include: live music inside building on June 24 (YouTube video link provided to staff by complainant); wine tasting event on August 16 (advertised on internet via Facebook and / or Twitter); live music inside building on August 25 (advertised on internet via Facebook and / or Twitter); wine tasting event and music inside building on September 5 (advertised on internet via Facebook and / or Twitter); and live music on September 8 (advertised on internet via Facebook and / or Twitter).

Staff has communicated with you in the past regarding the concept of the accessory use of property. Staff has communicated by phone recently as well, upon receiving complaints, to inform you about the matters under consideration and the need to operate in accordance with the applicable Land Use Ordinance (LUO) provisions. This letter intends to more clearly define what is acceptable as an accessory use in light of the situations noted in the above paragraph. Our general guideline for events of the nature under consideration is one about every other month, which would total about six in a year. The frequency, timeframe, and characteristics of the currently noted situations exceed what is acceptable as an accessory use, per LUO Section 15-150 (see attached). Therefore, regardless of the degree of off-site impacts associated with these matters, I must ask you to cease using the property in such ways until and unless the property is rezoned to accommodate such uses. Further explanation of staff's stance on these matters is found in this letter.

The Town's interpretation of what constitutes an accessory use in this situation attempts to balance your right to operate a retail business with the concerns and rights of neighbors to be protected from anything happening on the site that exceeds what is normally and customarily associated with a retail business. Wine tasting in a retail establishment, conducted in accordance with NC ABC rules and regulations, is not an issue in and of itself. It is fairly common to enter a retail establishment selling wine and food products and find samples or small portions available as a preview, obviously with hope that customers will find the product appealing and choose to purchase it. The two recent wine tastings, however, were advertised in a manner that may be construed as an event, intended to attract more than the usual or typical number of customers into the store, i.e. a gathering, specifically to participate in the wine tasting event. As staff has communicated in past correspondence, it is not acceptable to use the property for 'events' until and unless the property is rezoned to allow such use. In short, conducting wine tasting

events frequently or in a manner that may be construed as an event exceeds what is customarily or commonly associated with a retail use.

Staff has communicated in the past regarding live music as well. From recent discussions, I understand that you do now sell some number of musical recordings in the store. I further understand that you were under the impression that this allowed for in-store performances on a somewhat regular basis as long as the performer had a product for sale during or after the performance. Please note that permissibility is not based on product availability alone. Rather, an assessment of the entire situation must be undertaken, including consideration of the frequency and characteristics of what is occurring. Consistent with earlier statements, any in-store performances must be infrequent in nature and conducted as accessory to retail sales rather than a music event that is advertised as a music event.

I must ask that you please cease the activities described herein except when they clearly meet the parameters for an accessory use of the property. Given the recent number of complaints received, one should recognize that these matters are of concern to some of your neighbors and likely will remain so in advance of the public hearing on your rezoning request. The next official action by staff, if applicable, will be to issue a formal 'Notice of Land Use Ordinance Violation' (NOV) letter. Such a letter would formally spell out specific violations, offer a remedy, and request that the remedy be followed. If the NOV notes that it is to be considered the final written notice, then you will officially be subject to civil penalties of up to \$5,000.00 per occurrence. This process is further described in LUO Sections 15-113 and -114 if you wish to read a more detailed description.

If the pending rezoning request is approved, then the foregoing comments would no longer be applicable, and use of the property would be governed by the new zoning district and the permit issued in accordance with that zoning. Please bear this in mind moving forward and respect the content of this letter in order to assist staff in moving the project review forward to the hearing stage without undue delay.

If you wish to discuss this matter further or set a meeting time to do so, please call me at 919-918-7333.

Sincerely,

A handwritten signature in black ink, appearing to read 'Marty Roupe', written in a cursive style.

Marty Roupe
Development Review Administrator

cc: Project file
and
Patricia McGuire, AICP, Planning Director
and
David Andrews, Town Manager

To: Mayor and Board of Alderman,

The business of 901 West Main Street and its neighbors have found themselves without clear guidelines as to what is permissible under accessory use of the property. Without clearly established limits the business and neighbors have been forced into a position of contesting all new non-retail uses at the property.

The business owner and a group of representative neighbors have met to discuss areas of common ground to create a climate most hospitable to the success of a small retail store while maintaining the protections of the properties' nonconforming retail status. We have found substantial areas of common ground that we believe will allow the business to promote its retail activity without violating the business' retail status. By strictly defining what is permissible at the property it provides all parties assurance that the business will maintain the retail status that we all support.

We realize it is an unusual request that accessory uses be defined ahead of time for a property, but this is a unique situation in the town zoning. Because of the circumstances, history and protections on this property we do not believe the process or agreements laid out here are applicable to defining the uses of any other property in town.

We have agreed on the following allowable uses:

- Farmers' stands as they operate now
- Food trucks as they operate now
- Christmas trees
- Pumpkin patch
- Craft/local artist table (a small presence of artisans)
- No sales of alcohol for onsite consumption
- Wine or beer tastings inside only: 2 per month total
 - wine/beer tastings will follow ABC permit rules
- 49 maximum people
- Reasonable hours: not later than 10pm
- Reasonable outside noise: to follow town noise ordinance guidelines
- Up to 3 outside seasonal events per year: only non-amplified acoustic music & notification to nearby neighbors
- Up to 3 indoor promotional events per week
 - only inside non-amplified acoustic music
 - acoustic indoor music to be limited to 5 acoustic musicians


We are asking simply that the town formally accept this agreement on the definition of those accessory uses that legitimately promote the retail nature of this particular business. The agreement allows the business to remain as an R-10 grandfathered for retail use and to operate with the greatest chance of success, and provides the neighbors assurance that the business will not change its essential use.



TOWN OF CARRBORO ATTACHMENT D-1
NORTH CAROLINA
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MEMORANDUM

TO: David Andrews, Town Manager
Mayor Mark Chilton and the Board of Aldermen

FROM: Martin Roupe, Development Review Administrator 

DATE: January 11, 2013

SUBJECT: Responses to Letter Submitted by Property Owner and Representative Group of Neighbors Regarding 901 West Main Street

Staff has been considering the letter and weighing whether such an agreement may simply be accepted; whether a permit must be sought; or whether changes to the LUO may be necessary. Additional information follows regarding staff's findings to date:

- Accessory use of property is specifically defined in LUO Section 15-150. The language contained therein does not clearly rule out allowing certain activities as accessory. To the contrary this section intends to provide guidance regarding what may be reasonably determined to be accessory, and what may be clearly out of bounds regarding accessory use of property.
- Options also under discussion are two-fold:
 - The appropriateness of utilizing the applicable language in LUO Section 15-126, which allows a permit to be issued to allow a change from one nonconforming use to another in certain, limited situations.
 - The possibility of a text amendment to provide additional flexibility regarding accessory use of property.
- The letter outlines several points of agreement regarding use of the property. Those points are outlined below in table format, with preliminary judgments by staff regarding the three possible approaches under consideration. Commentary from staff regarding the points is also provided, where applicable. Staff also met with the property owner, current manager Susan Siplon, neighbor Tina Saldana, and neighbor Devon Clark on Thursday, January 10 to discuss providing as much clarity as possible on some of the points contained in their letter. The included commentary touches on these discussions. Meanwhile, the owner and manager

and / or representative neighbors may provide additional information in their own words before or during the January 15 Board meeting. Staff does not intend to complicate matters by providing comments and asking questions. We are only trying to avoid possible further confusion, to the degree we are able to identify matters that may not be perfectly clear, regarding what may occur in the future.

<p>Point of Agreement</p>	<p>Accessory / Change from one nonconforming use to another / Text Amendment / Permissible</p>	<p>Commentary</p>
<p>Farmer's stand, as they operate now</p> <p>And</p> <p>Craft/local artist table (a small presence of artisans)</p>	<p>Change in use</p>	<p>While infrequent and random outside uses of commercial land do occur on sites around town, staff finds it difficult to allow an unlimited outdoor use as accessory when no historical, grandfathered right to do so has been established (beyond the permitted seasonal sales and food trucks). Therefore, the best approach identified is to allow these uses as a permissible use (Use Category 19.100) via LUO Section 15-126.</p> <p>For clarity, staff understands from discussions that the general location for the tables would be near the Main Street side of the courtyard, but no specific, rigid location needs to be identified. The tables would not intrude into any parking area or parking space, and would encumber not more than 200 total square feet of land (generally, 100 sf for farmer's stand and 100 sf for craft/local artist table).</p>

Point of Agreement	Accessory / Change from one nonconforming use to another / Text Amendment / Permissible	Commentary
No sales of alcohol for onsite consumption	n/a	Onsite alcohol sales is a matter governed by NC ABC. Town staff, however, is asked to sign a form regarding the matter that is taken to ABC. As is the case presently, staff agrees that it would be appropriate to 'not recommend' approval of any application for onsite alcohol sales unless a change in use and / or rezoning was approved for the property.
Wine or beer tastings inside only: 2 per month total – wine/beer tastings will follow ABC permit rules	n/a, so long as conducted in accordance manner customarily associated with retail	<p>A 'permit' for tastings is again a matter governed by NC ABC. As for town-related matters, tastings (of any kind, alcohol or otherwise) continue to be acceptable so long as they are conducted in relation to the retail business. This matter is described further in the letter from summer 2012 (see Attachment B).</p> <p>Staff's understanding is that all parties are comfortable with the concept of tastings of any kind (not only beer and wine) being noted on a store calendar, which would be available online, through an email list-serv (or similar email group), and in the store. No additional advertising would take place in any manner intended to turn these into more than customary, expected opportunities to try products available for purchase.</p>
Reasonable hours: not later than 10 pm	Change in use provides opportunity to impose as condition	In issuing a permit under Section 15-126, a willing condition could be added to establish a closing time of no later than 10 PM.

Point of Agreement	Accessory / Change from one nonconforming use to another / Text Amendment / Permissible	Commentary
Up to 3 outside seasonal events per year: only non-amplified acoustic music & notification to nearby neighbors	Change in use provides opportunity to impose as condition	<p>Limitations on such events could be covered as willing conditions on a Zoning Permit issued under Section 15-126. As staff understands, the owner and representative group of neighbors all are okay with three outdoor events plus one additional seasonal event (either pumpkin related or Christmas tree related) including live, acoustic music outside. Another seasonal event (pumpkin or Christmas tree related) would be acceptable, as customarily associated with seasonal sales, as long as live music does not occur outside. Other matters to be addressed as willing conditions include:</p> <ul style="list-style-type: none"> -No food truck rodeos; -Any single event would not last any longer than one day; -The notification mechanism would be via email. Anyone that requests to be included on the list would be included; -The email notification for such events would be sent a minimum of one week in advance of the event; -A maximum number of attendees outside the building is not established, but all attendees would need to remain either in the building or in the courtyard area. An exception to this would be patrons visiting a food truck. <p>*-Staff is anticipating receiving a statement from the owner and / or manager regarding the manner in which parking would be monitored / controlled both during events and in general. Such a statement, as well, would be included as a willing condition on the permit.</p>

Point of Agreement	Accessory / Change from one nonconforming use to another / Text Amendment / Permissible	Commentary
Up to 3 indoor promotional events per week – only inside non-amplified acoustic music – acoustic indoor music to be limited to 5 acoustic musicians	Change in use provides opportunity to impose as condition	<p>Staff is awaiting a statement from either the owner / manager and /or Tina / Devon clarifying that mutual agreement exists on the following:</p> <p>-Live, acoustic musical accompaniment (i.e. live background music) shall be distinguished from what otherwise may be construed as a promotional activity. Such background music shall be considered incidental to retail operations;</p> <p>-Further description would be submitted regarding the nature of indoor, promotional activities. Such activities may occasionally involve live, acoustic music as an activity (frequency needs to be determined), but the majority of promotional activities would support, in a readily identifiable way, the sale of products and goods available in the store.</p> <p>Staff anticipates including appropriate wording as a willing condition on a permit.</p>

Other considerations:

- Already-permissible uses and situations. Mentioned in the original letter (**Attachment C**) are retail, seasonal sales of pumpkins and Christmas trees, and food trucks. These uses are not referenced in the above table as they are already legally-permissible uses. The current maximum occupancy for the building is 49 people. Similarly, the Town's noise ordinance already applies to this property. Therefore, no further action is needed regarding these matters.
- Further explanation of use of LUO Section 15-126. Barring objections, staff expects to move forward with issuance of a Zoning Permit for 901 West Main Street in accordance with the information presented in the above table upon receipt of a permit application. The 'letter of

agreement' between the owner, manager, and representative neighbors shall be considered prima facie evidence that the resulting permissible land uses (with accompanying limitations) will be less adverse to neighbors. The points in the agreement, along with additional information in the commentary section of the above table, would be expected to be incorporated as willing conditions on the permit itself. The conditions would thereby become binding and enforceable.

- 'Final' list of acceptable uses of the property. Staff strongly suggests that if agreement ultimately is reached regarding this matter, the agreed-upon list of activities be considered definitive and final. While it will be possible to request to modify a Zoning Permit on file, staff would not be in a position take such requests lightly, or to negotiate terms and otherwise expand the list in the future, except in cases that absolutely clearly are identifiable as accessory within the language of LUO Section 15-150. Possible desires to change or modify the list in the future and over time, when agreement exists between owner, management, and neighbors, could be considered, but staff wishes to make clear that this should not be viewed as an easy or simple task to accomplish given the history and background to this point.
- Possibility of additional complaints / complainants. Staff has considered the possibility that additional complaints about the use of the property may occur in the future. Such complaints could potentially come from existing neighbors to the property that have not been a direct party to the current discussions for whatever reason, or from potential, new neighbors that have not yet moved into the neighborhood. Therefore, if a permit is issued, the matters contained therein would be considered settled and acceptable uses of the land. As mentioned above, the letter of agreement shall be considered evidence of less adverse impact and the agreed-upon conditions on the permit will be binding. Any complaints outside the scope of these discussions would be considered in the same manner complaints are handled in general.

Conclusion:

Staff considers issuance of a Zoning Permit, under LUO Section 15-126, to be the best possible outcome of the discussions to date for the reasons outlined in this memo.