

REQUEST FOR BOARD ACTION

HENDERSON COUNTY

BOARD OF COMMISSIONERS

MEETING DATE: 5 June 2006

SUBJECT: Order on amendment of Carriage Park special use permit

ATTACHMENT(S): Draft Order amending special use permit

SUMMARY OF REQUEST:

This item requests the Board's approval of the attached draft order, from the Board's recent hearing on amending the special use permit regarding the Carriage Park planned unit development.

County staff will be present and prepared if requested to give further information on this matter.

PROPOSED BOARD ACTION:

If the Board is so inclined, the following motion is suggested:

I move that the Board approve the order drafted by staff, the findings of fact contained therein, the conclusions contained therein, and the decree therein, as correctly reflecting this Board's previous action.

COUNTY OF HENDERSON
STATE OF NORTH CAROLINA

AMENDMENT TO SPECIAL USE PERMIT
FILE NUMBER SP-93-13

**IN THE MATTER OF THE SPECIAL USE PERMIT FOR
CARRIAGE PARK ASSOCIATES PLANNED UNIT DEVELOPMENT**

ORDER AMENDING SPECIAL USE PERMIT

The Board of Commissioners of Henderson County held a quasi-judicial hearing in this matter on May 22, 2006, to consider the amendment of the special use permit for the Carriage Park planned unit development as previously granted in Henderson County file SP-93-13, as amended. Having heard all the evidence, the Board makes the following findings of fact:

1. All members of the Board of Commissioners were present for this hearing. No member of the Board had a conflict of interest sufficient to justify their recusal from the hearing of this matter.
2. The Board determined that the following should be made parties to this action for the purpose of this hearing:
 - Henderson County Planning Department staff and planner Matt Card
 - Carriage Park Associates, L.L.C., represented by its agent, Dale Hamlin
 - Virginia Burke, resident of Carriage Park development
 - Fran Ackley, resident of Carriage Park development
 - Bonnie Marsh, resident of Carriage Park development
 - Daniel Thuron, owner of property adjoining the Carriage Park Development
3. Jack Osterberg, president of Carriage Park homeowners association, was a witness in this matter.
4. Carriage Park is a Planned Unit Development that was approved by the Board of Commissioners under Special Use Permit #SP-93-13 on October 11, 1993. Special Use Permit #SP-93-13 has been amended five times in the past. Under the terms of the Permit as amended, the issue of its amendment comes before the Board of Commissioners in a quasi-judicial setting, as do issues of appeal from the Planning Board. Further, under the terms of the Permit as amended, hearings before the Planning Board are required to be quasi-judicial in nature.

5. Henderson County staff, based on its experience with the Permit, has proposed the following amendments:

All references in Sections 19 and 25 of the Permit to the Board of Commissioners of Henderson County shall be deemed instead to refer to the Henderson County Zoning Board of Adjustment. Any references in any document heretofore adopted by the Board of Commissioners amending the Permit requiring future review of the Permit, the subdivision permitted thereby, or any portion thereof, by the Board of Commissioners shall be deemed instead to require such review be held by the Henderson County Zoning Board of Adjustment.

Any references to quasi-judicial hearings before the Henderson County Planning Board shall be deleted, such that all further hearings before the Henderson County Planning Board

shall be held on an informal basis, unless a quasi-judicial hearing would otherwise be mandated by the Henderson County Zoning Ordinance.

6. The Board of Commissioners scheduled a quasi-judicial public hearing on Special Use Permit Application #SP-93-13 for May 22, 2006. The public hearing was advertised in accordance with the Henderson County Zoning Ordinance and this Board's Rules of Procedure for Quasi-Judicial Proceedings. Staff sent notices via certified mail to the applicant and the owners of property adjacent to the outer boundary of Carriage Park. Staff posted notice of the public hearing on the Carriage Park property, and had notices of the public hearing published as legal advertisements in *The Times-News*.

7. The proposed modification will not result in any instance in which the Planned Unit Development fails to comply with either the Henderson County Zoning Ordinance or the Henderson County Subdivision Ordinance, or with other applicable law.

8. The modification if granted would be in compliance with both the letter and the spirit of the Henderson County Code, and of the Planned Unit Development as contemplated.

9. The modification if granted would aide the County staff, and both the proponents and the opponents of any development parcel plans, modifications or other issues arising under the Permit to obtain both a fair and timely hearing.

10. Though two residents of Carriage Park and one adjoining property owner testified in opposition to this amendment, the Board is persuaded that the interests of all parties interested in the Carriage Park development with sufficient connection to be granted standing in any hearing regarding such development will be enhanced, not harmed, by this amendment.

11. In its discretion, the Board is inclined to grant this permit.

CONCLUSIONS

1. That the Board of Commissioners has jurisdiction to hear and consider requests to make amendment to Special Use Permit # SP-93-13 (as amended).

2. That neither Special Use Permit #SP-93-13 (as amended) nor the Henderson County Code prohibit the amendment as requested.

3. That no person has demonstrated any harm as a result of the granting of the amendment as requested.

NOW, THEREFORE, based on the foregoing FINDINGS OF FACT and CONCLUSIONS, the Henderson County Board of Commissioners by majority vote orders that the Special Use Permit #SP-93-13 is amended, as follows:

1. All references in Sections 19 and 25 of the Permit to the Board of Commissioners of Henderson County shall be deemed instead to refer to the Henderson County Zoning Board of Adjustment. Any references in any document heretofore adopted by the Board of Commissioners amending the Permit requiring future review of the Permit, the subdivision permitted thereby, or any portion thereof, by the Board of Commissioners shall be deemed instead to require such review be held by the Henderson County Zoning Board of Adjustment.

2. Any references to quasi-judicial hearings before the Henderson County Planning Board shall be deleted, such that all further hearings before the Henderson County Planning Board shall be held on an informal basis, unless a quasi-judicial hearing would otherwise be mandated by the Henderson County Zoning Ordinance.

Signed this the ____ day of June, 2006.

HENDERSON COUNTY BOARD OF COMMISSIONERS

By: _____
WILLIAM L. MOYER, Chairman

Attest:

Elizabeth W. Corn, Clerk to the Board of Commissioners