

# **REQUEST FOR BOARD ACTION**

## **HENDERSON COUNTY**

### **BOARD OF COMMISSIONERS**

**MEETING DATE:** 15 November 2006

**SUBJECT:** Special Use Permit Amendment (Application SP-05-01-A1) for River Stone Development

**ATTACHMENTS:** Order for Special Use Permit SP-05-01-A1

#### **SUMMARY OF REQUEST:**

On October 19, 2006, the Board of Commissioners held a quasi-judicial hearing to determine whether to allow an amendment to the Special Use Permit SP-05-01 for the River Stone Subdivision. The amendment was requested to add further lots to the River Stone Subdivision. Both the Planning Department and the Applicant, Windsor-Aughtry, presented evidence.

Upon hearing all the evidence, the Board voted to allow amendment SP-05-01-A1. Key issues concerning the Board of Commissioners were in regards to setback requirements and the type of buffer used to separate the new lots from property adjacent to River Stone. Attached is the order permitting the amendment contingent on several conditions including that the applicant create a vegetative border on the northern boundary of Lots 8 and 9.

#### **PROPOSED BOARD ACTION:**

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

**I move that the Board adopt the order attached to the agenda materials accompanying this item.**

COUNTY OF HENDERSON  
STATE OF NORTH CAROLINA

SPECIAL USE PERMIT AMENDMENT  
SP-05-01-A1

IN THE MATTER OF THE APPLICATION OF  
WINDSOR-AUGHTRY, INC.,  
Applicant,

To the

HENDERSON BOARD OF COMMISSIONERS,  
Permit Authority

ORDER AMENDING SPECIAL USE PERMIT SP-05-01

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The HENDERSON COUNTY BOARD OF COMMISSIONERS having held a quasi-judicial public hearing on October 19, 2006 to consider the application submitted by WINDSOR-AUGHTRY, INC to amend a Special Use Permit No. SP-05-01 for the purpose of including fourteen (14) additional lots north of existing lots 605-609 and east of existing lots 327-334, and having heard all the evidence and arguments presented at the hearing, makes the following FINDINGS OF FACT and draws the following CONCLUSIONS.

FINDINGS OF FACT

1. A quasi-judicial public hearing was held by the Henderson County Board of Commissioners on the amendment to special use permit #SP-05-01 on October 19, 2006. All members of the Board of Commissioners were present and participated in this hearing.
2. This Order, and the approval of the special use permit amendment herein, was moved by Commissioner McGrady and approved unanimously by the Board of Commissioners.
3. Windsor-Aughtry, Inc, hereinafter referred to as "Applicant" owns property having the parcel identification numbers 9642-90-4197 and 9651-19-1553. The Applicant is presently developing a Planned Unit Development, hereinafter "PUD", under Special Use Permit SP-05-01 issued by the Henderson County Board of Commissioners December 15, 2005. As a result, the Applicant was made a party to this proceeding. Drew Norwood is the President of Applicant, and was present at this hearing and testified on behalf of Applicant.
4. R. Kevin Minish ("Minish") is the current owner of the property which will be incorporated into the River Stone Subdivision. His property is known by the Henderson County parcel identification number of 9652-10-1814. As a result, Minish was made a party to this proceeding. Minish was present at this hearing and testified in favor of this application.
5. Anthony Starr is the Director of the Henderson County Planning Department. Matt Cable, Autumn Radcliff, and Matt Card are planners in the Henderson County Planning Department. As agents of Henderson County, Mr. Starr, Mr. Cable, Ms. Radcliff, and Mr. Card were made parties to this hearing.

6. Notice of a quasi-judicial public hearing, pursuant to the Ordinance, the Henderson County Code, and the Rules of the Henderson County Board of Commissioners was duly and timely given. This notice included legal advertisements in *The Times-News* newspaper on September 27, 2006 and October 4, 2006, notice sent by certified mail to the applicant and property owners adjacent to the boundary of the subject property, and the posting of notice on the subject of property.
7. Anthony Darity (“Darity”), Mary Cunningham (“Cunningham”), and Odell Suber (“Suber”) sought to become parties to this hearing. As no other party objected, the Board of Commissioners in its discretion made Darity, Cunningham, and Suber parties to this hearing.
8. Upon inquiry by the Chair of the Board of Commissioners, no party objected to any of the other persons or entities made parties to this action being a party to this action.
9. All parties and all witnesses presented by any party, were sworn as witnesses in this proceeding on October 19, 2006.
10. Without objection from any party, the Board of Commissioners received into evidence a memorandum from Matt Cable, Planner on October 19, 2006 consisting of two pages, and five attachments, and four additional documents introduced into evidence. No party disputed any of the information contained in this evidence and the Board of Commissioners finds all the information contained in the memorandum and its attachments to be credible and to be fact for the purpose of this hearing.
11. The subject property consists of approximately 175.52 acres, located near the intersection of Butler Bridge and North Rugby Rd. The application would increase the size of the property to 179.22 acres. These new lots will be described as Section 11 and will include Lots 1 through 15.
12. The subject property is in two zones, R-10 (High-Density Residential) and R-15 (Medium-Density Residential).
13. Pursuant to the Section 200-33 of the Zoning Ordinance, a Special Use Permit may be amended if the following provisions are met:
  - a. “The land in the planned unit development must be under single ownership or management by the applicant before final approval and/or construction, or property assurances shall be provided that the development can be successfully completed by the applicant.”
  - b. No structures may exceed 35 feet in height as measured from the highest ground elevation of the building to the roof’s highest point.
  - c. Each development must provide reasonable visual and acoustical privacy for its residents. Fences and landscaping can be used to provide visual screens, noise reduction, and privacy for its occupants.
  - d. If barriers within 200 feet of the perimeter do not give existing landowners privacy, the Board of Commissioner may order certain setbacks and structures

and determine the location of structures so new development is not detrimental to the existing residents.

14. The provisions of the amendment of the special use application have been satisfied in the application as proposed except as found in Paragraph 15 below.
15. The application does not satisfy at present the Board of Commissioners as to meeting the general provisions of the Ordinance regarding ownership, privacy, and perimeter treatment in the following:
  - a. The included property is not yet under the ownership of the applicant. The proposed Section 11 is still owned by Minish while the PUD property is owned by the Applicant.
  - b. Within Section 11, the Applicant had proposed a 6 foot fence on the northern border of Lot 8 and a cut slope of 12 feet in height on the eastern border of lots 9 through 15.
16. No party opposed the grant of the amendment to the Special Use Permit sought by Applicant, with the conditions stated below.

## CONCLUSIONS

Based on the foregoing FINDINGS OF FACT and CONCLUSIONS drawn, and it appearing to the HENDERSON COUNTY BOARD OF COMMISSIONERS that Special Use Permit, SP-05-01-A1, should be amended in part:

1. All parties were properly before the Board, and all evidence presented herein was under oath, and was not objected to by any party. All evidence relied upon in this Order was credible and reliable.
2. Sections 200-56 and 200-70 of the Henderson County Code govern the grant or denial by the Board of Commissioners of an amendment to a special use permit.
3. The Board of Commissioners had jurisdiction to hear this matter.
4. All parties, and all persons entitled to notice, have been given proper notice of this hearing and afforded the right to be heard.
5. The application meets all the standards of the Ordinance, subject to the conditions set forth below, and the application should be granted, subject to the conditions established below.

IT IS THEREFORE ORDERED by the HENDERSON COUNTY BOARD OF COMMISSIONERS that Henderson County special use permit application number SP-05-01-A1 is hereby granted, subject to the following conditions:

1. Any conditions set herein shall apply to the Applicant, and to any bulk transferee of lots from the Applicant.

2. Proper assurances of ownership of the newly-added property must be provided prior to construction.
3. Structures within Section 11 must be no higher than two stories.
4. The Applicant must submit to Henderson County Planning Department plans and other documentation to ensure that the vegetative buffer has been installed according to the guidelines set forth in Paragraph 5 below.
5. A vegetative buffer must be in place for the northern boundary of lots 8 and 9. This buffer must consist of a continuous hedge of evergreen shrubs (a minimum of eight (8) feet in height at maturity) planted in a five (5) foot strip spaced a maximum of eight (8) feet apart.
6. There are no additional buffer requirements for the eastern border of Section 11.
7. There are no additional setback requirements for Lots 8 through 15.
8. All the above conditions shall be required prior to the approval and recordation of the final plat unless specifically stated otherwise.
9. Section 11 must comply with the conditions of the original Special Use Permit, SP-05-01.
10. The Order granted this permit is expressly conditioned on the applicant receiving all approvals required under the Henderson County Zoning Ordinance and Subdivision Ordinance and upon the applicant remaining in compliance with the Zoning Ordinance and Subdivision Ordinance.

ORDERED the \_\_\_\_ day of \_\_\_\_\_, 2006

THE HENDERSON COUNTY BOARD OF  
COMMISSIONERS

By: \_\_\_\_\_  
WILLIAM L. MOYER, Chairman

ATTEST:

\_\_\_\_\_  
Elizabeth W. Corn  
Clerk to the Board of Commissioners

ACCEPTANCE BY APPLICANT

I, Drew Norwood, Applicant, do hereby acknowledge receipt of this order on behalf of the Windsor-Aughtry, Inc., Owner of the property which is the subject of this Special Use Permit. I further acknowledge on behalf of Windsor-Aughtry, Inc. that no work may be done pursuant to this permit except in accordance with all of its conditions and requirements and that this restriction shall be binding on Windsor-Aughtry, Inc., and its successors in interest.

This the \_\_\_\_\_ day of \_\_\_\_\_, 2006

\_\_\_\_\_  
Drew Norwood, Applicant  
President  
Windsor-Aughtry, Inc

ACCEPTANCE BY OWNER

I, R. Kevin Minish, Applicant, do hereby acknowledge receipt of this order as the Owner of the property which is the subject of this Special Use Permit. I further acknowledge that no work may be done pursuant to this permit except in accordance with all of its conditions and requirements and that this restriction shall be binding on me and my successors in interest.

This the \_\_\_\_\_ day of \_\_\_\_\_, 2006

\_\_\_\_\_  
R. Kevin Minish,  
Owner

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NORTH CAROLINA  
HENDERSON COUNTY

I, \_\_\_\_\_, Notary Public for said County and State certify that Elizabeth W. Corn personally came before me this day and acknowledged that she is the Clerk of the Board of Commissioners of Henderson County, a municipal corporation and that by the authority duly given and as the act of the corporation the foregoing instrument was signed in its name by its Chairman of the Board of Commissioners, sealed with its corporate seal, and attested by herself as its Clerk.

Witness my hand and official seal, this the \_\_\_\_\_ day of \_\_\_\_\_, 2006

(Official Seal)

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

My Commission Expires:

\_\_\_\_\_

STATE OF NORTH CAROLINA  
COUNTY OF HENDERSON COUNTY

I, \_\_\_\_\_, a Notary Public for said County and State, do hereby certify that Drew Norwood personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal, this the \_\_\_\_\_ of \_\_\_\_\_, 2006.

(Official Seal)

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

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

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STATE OF NORTH CAROLINA  
COUNTY OF HENDERSON COUNTY

I, \_\_\_\_\_, a Notary Public for said County and State, do hereby certify that R. Kevin Minish personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal, this the \_\_\_\_\_ of \_\_\_\_\_, 2006.

(Official Seal)

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

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

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STATE OF NORTH CAROLINA  
COUNTY OF HENDERSON COUNTY

I, \_\_\_\_\_, a Notary Public for said County and State, do hereby certify that \_\_\_\_\_ personally appeared before me this day and acknowledged that \_\_\_\_\_ is \_\_\_\_\_ Secretary of Windsor-Aughtry , Inc, a North Carolina Corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by is \_\_\_\_\_, sealed with its corporate seal and attested by \_\_\_\_\_, as its \_\_\_\_\_.

Witness my hand and official seal, this the \_\_\_\_\_ of \_\_\_\_\_, 2006.

(Official Seal)

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

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