

MINUTES

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

BOARD OF COMMISSIONERS
NOVEMBER 14, 1994

The Henderson County Board of Commissioners met for a special called meeting at 7:00 p.m. in the Commissioners' Meeting Room of the Henderson County Office Building.

Those present were: Vice-Chair Renee Kumor, Commissioner J. Michael Edney, Commissioner William McKay, County Manager David F. Thompson, Staff Attorney Angela M. Skerrett, and Clerk to the Board Elizabeth W. Corn.

Also present were: Zoning and Code Enforcement Administrator Sam Laughter and County Planner Stuart Rohrbaugh.

Absent were: Chairman Vollie G. Good, County Attorney Don H. Elkins, and Assistant County Manager David E. Nicholson. Commissioner Hugh D. Randall was not present at the beginning of the meeting but was expected to arrive later.

CALL TO ORDER/WELCOME

Vice-Chair Kumor called the meeting to order and welcomed all in attendance. She stated the purpose of the meeting was a Work Session on Carriage Park (Amendment of Special Use Permit 93-13 Issued to Carriage Park Development Corporation).

This work session was to discuss the information gained at the Quasi-Judicial Hearing on October 19, 1994. There will be no public input at this meeting.

AMENDMENT TO SPECIAL USE PERMIT 93-13
ISSUED TO CARRIAGE PARK DEVELOPMENT CORPORATION

Angela Skerrett reminded the Board that on October 19 a Public Hearing was held to consider the relocation of a portion of the major collector road through Carriage Park Planned Unit Development (PUD). The Board had previously approved a special use permit to Carriage Park on October 11, 1993, allowing them to develop a planned unit development. The Zoning Ordinance requires that any change to the transportation circulation system of a planned unit development come back to the Board for approval. That's why this was presented as an amendment to the existing special use permit. There were eight parties to the proceeding excluding staff. Each presented evidence to the Board concerning the relocation. At the

November 14, 1994

Page 2

close of the evidence the Board briefly discussed the hearing. The Board of Commissioners directed staff to prepare the draft findings of fact for review and to share all the information with the parties to the proceeding. The Board also directed staff to prepare for a work session to discuss the evidence (this meeting) and to come up with the written decision the Board must make within 45 days.

Basically there are two issues:

1. Whether the road relocation should be allowed as requested, and
2. Whether the development parcel reconfiguration should be allowed.

Ms. Skerrett reviewed the Options available to the Board of Commissioners.

Ms. Skerrett informed the Board that there are three basic parts to a decision:

1. Findings of Fact. N.C. case law makes some observations about findings of fact. Critical findings of fact must be based on sworn testimony or other competent evidence. It will be up to the Board to make the determination of what is competent evidence. Secondly, findings of fact must be based on substantial evidence in the record. One must draw them based on what was presented at the October 1994 Public Hearing. Thirdly, the findings of fact's purpose is to support the decision you make; they must support the conclusions made and the conditions imposed.

2. Conclusions. The Zoning Ordinance requires that you make conclusions. Conclusions must be made based on your findings of fact in order to make a decision. There are three basic conclusions you must make for a Special Use Permit (required by Section 907 of the Zoning Ordinance):

1. that the special use permit will not adversely affect the health and safety of persons residing or working in the neighborhood of the proposed use,
2. that the special use permit will not be detrimental to the public welfare, and
3. that the special use permit will not be injurious to property or public improvements in the neighborhood.

3. Decision. A written decision must be reached.

You must always keep in mind when drafting a written decision what the court would look at if somebody were to appeal the decision that was made. The court basically looks at five things. They

November 14, 1994

Page 3

review the record for any errors of law to make sure the law was applied correctly. The court will make sure that the procedures that are in the Ordinance and any procedures set out by statute were followed. The court will want to make sure that the due process rights of the parties were protected, the right to offer evidence, cross-examine witnesses, and inspect the documents. This right can be waived if somebody didn't object at the hearing. The court would ensure that the decisions are supported by competent material and substantial evidence in the record, evidence offered under oath. Failure of anyone to object at the hearing will also bar them from raising that on appeal as well. The court would want to make sure that your decision was not arbitrary or capricious.

DRAFT FINDINGS OF FACT & CONCLUSIONS

Ms. Skerrett reviewed the draft Findings of Fact & Conclusions:

1. Carriage Park Development Corporation, hereinafter referred to as "Applicant," is presently developing a Planned Unit Development, hereinafter "PUD," under Special Use Permit No. 93-13 issued by the Henderson County Board of Commissioners, October 11, 1993. Dale Hamlin is general manager of Carriage Park Development Corporation. Luther Smith, a licensed professional landscape architect owning and operating Luther E. Smith and Associates, P.A., is designing the PUD on behalf of Carriage Park Development Corporation.
2. Matt Matteson is the Director of the Henderson County Planning Department. Stuart Rohrbaugh is a planner in the Henderson County Planning Department.
3. Frank Caruso is a resident of the PUD, residing at 216 Rockway Lane, Hendersonville, NC, specifically Lot 65 of Plat Slide 842, recorded in the Henderson County Registry. Mr. Caraways purchased his property in 1992.
4. Ernest L. Pryor resides at 2761 Haywood Road, Hendersonville, NC. His driveway runs right beside the PUD.
5. John Perry resides at 2763 Haywood Road, Hendersonville, NC. His property is adjacent to the "Corn Property".
6. Jack Drill is a resident of the PUD, residing at 113 Carriage Walk Lane, Hendersonville, NC.
7. Harold Small resides at 2765 Haywood Road, Hendersonville, NC. His property is adjacent to the "Corn Property".
8. Virginia Burke is a resident of the PUD, residing at 114 Jenny Lind Drive, Hendersonville, NC.
9. Leon A. Cookman is a resident of the PUD, residing at 150 Governor's Drive.
10. The PUD encompasses 377.6 acres and is further described in the FINDINGS OF FACT for Special Use Permit No. SP-93-13.
11. SP-93-13 allowed for development of the 377.6 acre project site on a development parcel-by-development parcel basis with each such development parcel requiring final approval by the Henderson County Planning Board. The status of the development regarding residential units which have been approved for construction, constructed or building permits for construction have been issued, is as follows:

November 14, 1994

Page 4

- Section 1,2,3,4, and 5 - 103 Units approved (SP-87-2)
 Section 3A,6, and 25 - 78 Units approved (SP-93-13)
 Subtotal - 181 Units approved to date
 Total units permitted
 for the project site - (667)Units
 Balance available for
 future development -486 Units
12. On April 8, 1994, the Applicant acquired 14.7 acres of land adjacent to the eastern boundary of the PUD, hereinafter referred to as the "Corn Tract", said Corn Tract being more fully described in Deed Book 842, Page 253.
13. By way of a letter dated July 27, 1994 the Applicant initiated a request to the Board of Commissioners to amend the Research Master Plan to allow for the partial relocation of an unbuilt section of a major collector road (Carriage Park Way) across a portion of the Corn Property. Specifically, the letter requested that two amendments be made to the existing SP-93-13:
1. That the proposed alternate corridor for the Collector Road within the PUD be approved and that the sixty (60) foot requirement identified in Condition 13 of SP-93-13 be waived at the points of exit and entry of the Collector Road for the 377 acre PUD tract.
 2. That the Zoning Administrator be given the authority pursuant to 700.06 (6) to review and approve future changes in the location of the Collector Road System which may be necessary due to environmental and topographic constraints, so long as such changes do not significantly alter the purpose or intent of the Collector Road System and that the boundaries of adjacent development parcels may be adjusted to reflect such changes in the Collector Road alignment."
- A map attached to the July 27, 1994 letter showed the existing collector road and the proposed alternate collector road. The map also showed the original configuration of Development Parcels 7,8, and 9. On the map, the proposed alternate collector road bisected development parcels 7 and 9.
14. The Henderson County Planning Board considered the Applicant's request to relocate a portion of the major collector road on September 27, 1994. A map entitled "Research Master Plan, Proposed Collector Road Relocation", revised July 7, 1994, hereinafter "Revised Master Plan, " showed the original collector road location and the proposed collector road relocation. The Revised Master Plan also showed Development Parcel 8 in its original configuration, and showed Development Parcels 7 and 9 in a new configuration. The Planning Board, by motion duly made, seconded, and voted upon, forwarded a favorable recommendation tot he Board of Commissioners concerning the proposed relocation. Applicant presented the Revised Master Plan to the Henderson County Board of Commissioners.
15. Development Parcel 9, as newly configured on the Revised Master Plan, hereinafter "new Development Parcel 9," contains a deletion of property from the original configuration of Development Parcel 9, hereinafter "original Development Parcel 9," caused by the bisection of original Development Parcel 9 by the new portion of the major collector road.
16. Development Parcel 7, as newly configured on the Revised Master Plan, hereinafter "new Development Parcel 7," contains a deletion of property from the original configuration of Development Parcel 7, hereinafter "original Development Parcel 7," caused by the bisection of original

November 14, 1994

Page 5

- Development Parcel 7 by the new portion of the major collector road. In addition, new Development Parcel 7 contains an addition of approximately 1.5 acres to the northern part of original Development Parcel 7. At the closest point, the northern boundary of new Development Parcel 7 would be roughly 25 feet from Governor's Point development parcel, Governor's Point being a part of the PUD containing occupied development that preceded the issuance of SP-93-13. The northern boundary of new Development Parcel 7 would also be roughly 25 feet from the property owned by Mr. Frank Caraways.
17. A formal application to amend SP-93-13, application number SP-93-13-A1, was received by the Henderson County Zoning Department on September 30, 1994. The application requested "an Amendment to SP-93-13 approved master plan for purpose of re-routing a portion of the major collector road."
 18. All existing permits required of the Applicant under SP-93-13 for the PUD are current, without violations.
 19. The portion of the major collector road now being proposed for deletion, hereinafter "original portion," is approximately 1600-1800 feet in length. The original portion has slopes in excess of 100 percent. A 100 percent slope is essentially a 45 degree angle. Building the original portion of the collector road would require a horizontal disturbance of approximately 100 foot in width, for the roadbed, and would disturb approximately 4 acres.
 20. The portion of the major collector road proposed for addition, hereinafter "new portion," is approximately 800 feet long within the PUD boundary, and extends approximately 1200 feet outside of the PUD boundary. The new portion of the major collector road contains slopes of 45-50 percent. Building the new portion of the collector road would require a horizontal disturbance for the roadbed approximately 50 feet in width, and would disturb approximately 2.3 acres.
 21. Paving the new portion of the collector road will require the placement of approximately 7,200 square feet of more asphalt than paving the original portion of the collector road.
 22. Applicant has secured sedimentation and erosion control permits from the State of North Carolina for the construction of the new portion of the major collector road, and has installed the erosion control measures approved. Trees have been cut in the area, but no ground has been disturbed.
 23. The amended and restated declaration of covenants governing the PUD, recorded in Deed Book 782, page 591, states in Article 4 page 16 that "regarding maintenance, repairs and alterations and offering of elective services, the association shall be responsible for the operation, maintenance, upkeep, replacement and improvement at its expense of all parts of the common areas, including specifically, C, all streets and roads located within the Property [defined as the entire PUD] until such time as such roads and streets become public roads and streets maintained by the State of North Carolina or an agency of the State of North Carolina." The covenants, however, provide that land can be added to the development.
 24. The new portion of the major collector has a sight distance of approximately 500 feet as its intersection with Carriage Drive. The original portion of the major collector road has a sight distance of 250 feet at its intersection with Carriage Drive.

November 14, 1994

Page 6

25. The terrain at the original portion of the major collector road is extremely steep and construction would involve "side hill" cuts that would be very wide and destructive to the existing vegetation. These cuts appear to create a potential for slides and also create a scar on the hillside that would be visible from Carriage Park Drive. The terrain at the new portion of the major collector road is not as severe and the roadway would fit the landscape with less impact on vegetation and with less potential for slides.
26. The new portion of the major collector road offers a shorter and more direct route for traffic.
27. The new portion of the major collector road comes within 200 feet of existing homes outside the development, including the residence of Mr. Harold Small.
28. Incorporating the new portion into the major collector road would reroute construction traffic away from the interior of Governor's Point.
29. Relocating the major collector road as proposed on the Revised Master Plan will provide direct access to a major collector road for every development parcel within the PUD, as required by SP-93-13.

LATE ARRIVAL

Commissioner Hugh D. Randall arrived at approximately 7:35 p.m., during Angela Skerrett's review of the Draft Findings of Fact.

It was decided to move #12 up to before #5, regarding the "Corn Property". There was considerable discussion of all the Findings of Fact. There were some minor changes suggested to findings #14, #16, and #18. There was discussion of some additional findings.

CONCLUSIONS and **CONDITIONS** were reviewed and slight changes offered with much discussion. Conditions were discussed for adding the "Corn Property" to the PUD and for not adding the "Corn Property" to the PUD.

There was much discussion whether the "Corn Property" should be part of the PUD. There was also discussion as to whether the new northern boundary of Development Parcel 7 should come no closer than ?? feet to any existing development or whether the portion of property added to the northern part of Development Parcel 7 on the Revised Master Plan shall be required to remain as open space.

Whether or not the "Corn Property" is added to the PUD, the Commissioners wanted to be assured that there is a satisfactory understanding that the road will be maintained in perpetuity.

There was much discussion of whether or not to allow reconfiguration of some of the parcels.

November 14, 1994

Page 7

Action will be taken at a later meeting.

CLOSED SESSION

Commissioner McKay made the motion for the Board to go into Closed Session as allowed under N.C.G.S. 143-318.11(a)(4) to discuss matters relating to the location or expansion of industries or other businesses in the area served by the public body. All voted in favor and the motion carried.

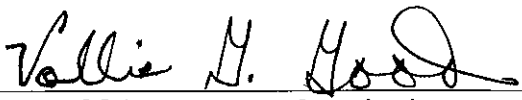
Commissioner Edney made the motion for the Board to go out of Closed Session. All voted in favor and the motion carried.

There being no further business, Commissioner Edney made the motion to adjourn the meeting at 9:30 p.m. All voted in favor and the motion carried.

ATTEST:



Elizabeth W. Corn, Clerk



Vollie G. Good, Chairman

THIS PAGE
INTENTIONALLY
LEFT BLANK