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**REQUEST FOR BOARD ACTION**  
**HENDERSON COUNTY**  
**BOARD OF COMMISSIONERS**

**MEETING DATE:** July 19, 2023

**SUBJECT:** Final order, Johnston Family Group and Orange Capital Advisors rezoning (R-2023-02)

**PRESENTER:** Charles Russell Burrell

**ATTACHMENT(S):** Proposed Conditions for Approval

**SUMMARY OF REQUEST:**

On April 1, 2023, the Board held a public hearing on a proposed rezoning for "The Farmhouse at Taproot". The Board gave its approval to the rezoning on April 3, 2023, subject to conditions. Under N.C. Gen. Stat. §160D-703(b), the conditions imposed by the Board must be agreed by the applicant. Those conditions, with applicant approval, are attached.

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

**BOARD ACTION REQUESTED:**

Approval of the Conditions as presented

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

***I move that the Board approve the Conditions for Approval for rezoning R-2023-02-C, previously given preliminary approval by the Board, as accurately stating the Board's conditions for approval of the rezoning.***

## Conditional Rezoning Application R-2023-02-C Conditions for Approval

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**Applicants:** Johnston Family Group and Orange Capital Advisors, LLC  
**Property:** Henderson County GIS PIN 9652-12-2330

The following conditions are in addition to and intended to supplement and amend the application for Conditional Re-zoning submitted by the Co-Applicants, the proposed site plan and the Henderson County Land Development Code (herein "Henderson County LDC"). In case of any conflict between this document, the LDC, and the site plan, the final approved site plan will control, then these Conditions, then the application filed. To the extent that any specification or development standard has been omitted from or is not addressed in the site plan or this document, the presumption is that the standard or specification in the LDC shall apply.

The conditions are as follow:

1. Size and Scope of project (numbers are approximate, subject to confirmation when site plan is final):
  - a. Size of project: approximately 20.32 acres.
  - b. As shown on the site plan: Maximum of 270 total residential apartment units, based in ten (10 total apartment buildings, plus associated amenities buildings, of a size and scope illustrated on the site plan.
  - c. Overall project density will not exceed 14.0 units per acre. Dimensional requirements are as shown on the site plan. Building separation shall be a minimum of twenty feet (20') as stated in SR1.5 4(b).
2. I-26 and outer boundary of project: All buildings must maintain 45 foot minimum setback from the I-26 right of way. Perimeter boundary setbacks shall not be less than as illustrated on the site plan submitted. No landscape buffer is required along outer project boundary.
3. Sidewalks not less than 5 feet in width shall be installed on at least all building sides that separate the building from a roadway or parking lot within the development.
4. Interior roads – build to Henderson County design standards for residential major subdivisions; minimum road right of way width of 50 feet for roads that will be made public (including valley curb & gutter if utilized). Travelable surfaces of two way roads built to at least 18' width, and one way roads to 12' travelable surface. No pervious pavement shall be required within the development.
5. Road passage in parking lot areas- In parking lot areas, all two way road passage shall have a 26' width between parking spaces, as opposed to the 24' passage shown on the site plan. This is to comply with the fire marshal requirements.
6. Traffic Impacts on Butler Bridge Road - Developer must comply with all standards and requirements of NCDOT for the roadway entrances onto Butler Bridge Road. Entrance improvements if any required shall be completed before a certificate of occupancy is issued for any dwelling structure. Applicant may use the entrance shown as the eastern emergency entrance on the

site plan as the main entrance to the project, so long as Applicant complies with all requirements of NCDOT as to that entrance. The County planning office shall upon request review and approve the final plat as to compliance with this provision.

A. If the eastern entrance is utilized as the main entrance to the project, Developer/Owner may use the current 60 ft. wide western entrance as an emergency entrance, setting the gate thereon back from Butler Bridge Road in a fashion that allows emergency vehicles to be totally off of Butler Bridge Road prior to reaching the gate.

B. In the alternative to the foregoing regarding the main entrance to the project,, Applicant may utilize as the principal entrance a western entrance to the immediate west of that originally proposed, if that entrance meets the following minimum criteria:

(1) the portion of that entrance exiting that entrance onto Butler Bridge Road, for travel in an easterly direction, must be directly opposite Yadkin Road and designed in accord with NCDOT standards, and

(2) the design of that entrance/exit from the project must be approved for use by the Henderson County Fire Marshal and /or other appropriate emergency services authorities as determined by the Henderson County Planning Director; and

(3) the installation and use of that entrance must be approved by NCDOT, and designed and installed according to NCDOT standards and requirements, and to that end Applicant must:

(i) erect all appropriate signage, signals and/or traffic regulation lights required by NCDOT, and

(ii) submit to the Henderson County Planning Director proof of approval by NCDOT.

(4) If Applicant utilizes this alternative entrance, contemplated to be constructed on lands currently owned by Phillip Keith Gilliam (with title or right of way to be acquired by Applicant), Applicant may utilize the eastern entrance as an emergency entrance, as originally proposed.

7. Off-street parking: each unit shall have sufficient off street parking for at least one and one-half (1.5) standard passenger automobiles per residential unit. (Averaged over the total units). Additional off-street spaces shall be provided for the common amenities area, with locations and number as shown on the site plan. No on-street storage of boats, campers, recreational vehicles, or trailer apparatus shall be allowed within the project.

8. Storm water drainage facilities shall be built to an approved engineered storm water treatment and retention plan, and shall be approved by by State or local authority as by law required.. No storm water retention facilities which promote standing water for more than forty-eight (48) hours shall be allowed of such size or nature as would attract large numbers of waterfowl. The storm water retention pond shall be constructed in compliance with the standards and rules of NCDEQ as may be required at the time of construction, and the same shall be permitted or otherwise authorized by the proper government authority, recognizing that the facility is within five miles of a regional airport.

9. Fire hydrant locations shall be provided per Henderson County fire standards within

development and be approved by the Fire Marshal and indicated on each development plan.

10. Subsurface utilities are required for all phases of the development.

11. Landscaping—including street trees, buffers, and natural areas—will be provided as required by the Henderson County LDC and noted on Master Plan.

12. Open Space:

a. The applicant will set aside approximately 20% of the Subject Property (3.78 acres) as open space. A minimum of 1.89 acres of the total area in the project shall be common space, including amenity locations.

b. Open space areas (approximate size and location) shall be shown on the master plan. These areas shall be designated and (where applicable) dedicated for each phase of the project as plats are recorded.

c. The Planning Office shall monitor compliance with this condition on the final site plan. Minor variances in the percentage amounts of such areas shall be in the discretion of the Planning Office.

13. Resident amenities: Central amenity facilities will include those features shown on the site plan.

14. Lighting:

A. Street lighting: Lighting will be installed in accordance with the following:

(1) Light Level - .5 fc average with 4-6 Avg/Min uniformity (or compliant with current IES/ANSI standards for residential street lighting - reference RP-8-18)

(2) Pole Mounting Height - Max 25 ft (spacing dependent on design layout to meet recommended light level)

(3) Pole Material - Aluminum or Concrete preferred

(4) B-U-G Rating (Back-Up-Glare) - Not to exceed B2-U0-G2 (B1-U0-G1 preferred) Light Source - LED, 3500K or 4000K Color Temp (not to exceed 4000K)

15. Matters Relating to the Airport- No upward facing lighting shall be utilized on the project which could reasonably interfere with aviation operation and navigation related to the Asheville Regional Airport, or which could reasonably be construed to create confusion to pilots in navigation. The Applicant must execute and record an Avigation Easement in that form jointly approved by the Applicant and the Greater Asheville Regional Airport Authority

16. Street Trees—Street trees shall be installed per Henderson County LDC requirements, using County-approved species.

17. Building Code - Builder/ Developer to adhere to Henderson County LDC whenever it exceeds the NC Building Code requirements.

18. Submit to and receive approval of a water utilities plan from the City of Hendersonville and comply with City of Hendersonville regulations.
19. Submit to and receive approval of a sewer utilities plan from the applicable Sewer District and provide proof of wastewater treatment allocation.
20. Submit for prior approval all building plans for all structures to the County Inspections Department.
21. Apply for floodplain, stormwater and soil erosion control permits from the County for all required phases of development.
22. Apply for and execute an encroachment agreement with NCDOT for utility work within the right of way of Butler Bridge Road and I-26, as needed.
23. Apply for and receive a NCDOT street access permit and comply with all required road improvements identified by NCDOT, as may be required by law.
24. Pay in full all fees for permits, as each fee is assessed or becomes due.
25. Per Chapter 42 of the Henderson County Code, the approval authority for each phase of the project, if needed, is the Henderson County Planning Board. Approval authority of the final site plan and its compliance with these conditions, and the enforcement of these conditions, is granted to the Director of the Henderson County Planning Office. If the Planning Director deems further review necessary, on all issues of compliance, or requests for modification within the spirit of these conditions, those issues may be submitted to the Planning Board for consideration and approval.
26. The County shall retain the right to suspend construction and the issuance of building permits if the developer is found by the County to be in noncompliance with any one of the conditions imposed on the Project by the Board of Commissioners.
27. The site plan is deemed amended to show the eastern entrance as being totally on the property of the project, to correct an error existing thereon.
28. Requirement for Restrictive Covenants: Co-applicant Developer is responsible for implementing the development plan and maintaining compliance with all of the conditions set out herein, all of the features of the approved master plan, and all applicable provisions of the Henderson County LDC to the extent not waived or modified herein. Applicant has elected to carry out some of its responsibilities through the use of private restrictive covenants, as allowed by the Henderson County Code. The forms of the restrictive covenants will be submitted to the County Attorney for approval after application approval. To this end, the County shall reserve the right to review any amendment or revision to the restrictive covenant documents prior to their effectiveness to ensure continued compliance with this conditional zoning ordinance, and other applicable County ordinances. Failure to comply with any of the provisions of the conditional zoning ordinance or the Henderson County LDC, or other applicable provisions of the County ordinances, shall subject the applicant or its successors to penalties at law or in equity as provided for in the Henderson County LDC, other County ordinances, or North Carolina law, including repeal or amendment to the conditional zoning enactment.

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Adopted by a majority of the Board of Commissioners, this the 3<sup>rd</sup> day of April, subject to the agreement hereto by the Applicants, and executed on behalf of the Board the date shown below.

HENDERSON COUNTY BOARD OF COMMISSIONERS

By: \_\_\_\_\_  
REBECCA McCALL, Chair

Attest:

\_\_\_\_\_ Date: \_\_\_\_\_  
Clerk to the Board of Commissioners

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CONSENT PAGE TO CONDITIONAL ZONING ORDER-

We agree to the conditions stated above for requested rezoning.

Mary Louise Corn  
MARY LOUISE CORN

Date: 7/14/23

Michael R. Corn  
MICHAEL R. CORN

Date: 7/14/23

S. E. Johnston, III  
S. E. JOHNSTON, III

Date: 7-15-23

Kathy G. Johnston  
KATHY G. JOHNSTON

Date: 7/15/23

William Franklin Johnston  
WILLIAM FRANKLIN JOHNSTON

Date: 7-15-2023

Nancy M. Johnston  
NANCY M. JOHNSTON

Date: 7-15-2023

Timothy M. Johnston  
TIMOTHY M. JOHNSTON

Date: 7/15/23

Bradley A. Johnston  
BRADLEY A. JOHNSTON

Date: 7/15/23

ORANGE CAPITAL ADVISORS, LLC

By: W. McFaddin  
Member W. McFADDIN BLANDING  
PRESIDENT

Date: 7/15/23